THE CONFIRMATION OF FRENCH AND SPANISH LAND TITLES IN THE LOUISIANA PURCHASE

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PREFACE

The national domain originated in cessions to the federal government, by some of the original thirteen states, of lands west of the Alleghanies. By accepting these cessions the United States assumed the responsibility, (1) of providing some form of civil government for the inhabitants, (2) of confirming their titles to property, and (3) of administering the public domain for the common good. This responsibility was likewise assumed in the subsequent acquisition of other territories. The history of the first and third phases of the question has been extensively studied. Professor Payson Jackson Treat has touched that of the second phase in a chapter on "The Confirmation of Foreign Titles," in his "The National Land System, 1785-1820." He has, however, confined himself to a study of the confirmation of foreign land titles in the Old Northwest and erroneously assumed that conditions there were similar to those found elsewhere and that in meeting them Congress laid down precedents for later legislation. The history of the confirmation of the French and Spanish land titles in the Louisiana Purchase is the subject of this study.

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THE CONFIRMATION OF FRENCH AND SPANISH LAND TITLES IN THE LOUISIANA PURCHASE

Thomas Powderly Martin.

I. Introductory: Origin of the Public Domain, the Federal Land Policy, and the Problem of Confirming Pre-cessional Title and Claims.

1. The Public Domain.- During colonial days English possessions within what is now the United States belonged by royal grant to the individual colonies. Their jurisdiction over the domain, however, was not wholly independent of the Crown. This is clear from the fact that by the Proclamation of 1763 the governors of the colonies were forbidden to make grants of "any lands beyond the heads of sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west; or upon any lands whatever, which not having been ceded to, or purchased by us, as aforesaid, are reserved to the said Indians, or any of them."[1] Furthermore, by the Quebec Act of 1774 the territory north of the Ohio River was

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[1] Macdonald, Select Charters and Other Documents Illustrative of American History, 1606-1775, 270-272.

attached to the Province of Quebec. The Treaty of 1783 placed the western boundary of the United States at the Mississippi River, but the seven states whose charter limits extended west of the Alleghanies still maintained their claims to the western lands. The other six insisted that these lands should be held in common and, when sufficiently populated, erected into new states. The Proclamation of 1763, the Quebec Act of 1774, and the fact that the west had been defended by Continental troops were pointed out as powerful arguments for the latter course; and the existence of conflicting claims finally led to its adoption. At various times during the period of 1782-1802 the seven claimant states ceded to the federal government with certain conditions and reservations all rights to territory and jurisdiction in the Trans-Alleghany West.[2] For example ~~Thus~~ Virginia, the first state to make such a cession, required that the French inhabitants and other settlers at Kaskaskia, Vincennes, and neighboring villages professing themselves citizens of Virginia should have their possessions and titles confirmed to them. In taking charge of territory over which the states relinquished both ownership and jurisdiction, the federal government assumed a three-

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[2] Treat, The National Land System, 1785-1820, 1-14.

fold responsibility -- some form of civil government must be provided for the inhabitants, their property rights must be recognized and protected, and the public domain must be administered for the common good. In meeting each of these responsibilities Congress carefully formulated policies which, as seen in the case of the famous Ordinance of 1787, profoundly influenced subsequent history.

2. The Federal Land Policy.- Logically, Congress should have confirmed all pre-cessional claims and titles before taking any steps to dispose of the western lands; but settlers were passing over the mountains, soldiers were demanding their promised bounties, and the need of an increased revenue was keenly felt. Congress adopted first, therefore, in 1785 a plan for the disposition of the territory ceded by the individual states to the United States, which had been purchased of the Indian inhabitants.[3] Its essential features, derived from colonial practices,[4] were as follows: (1) the Indian titles were first to be extinguished;

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[3] Ibid., 36-40; for the text of the Ordinance of 1785, see ibid., 394-400.

[4] Ford, Colonial Precedents of Our National Land System as it Existed in 1800, in University of Wisconsin, Bulletin, History Series, II, No.2.

(2) the public lands were to be administered as a source of revenue; (3) purchasers were only to be given deeds for definite tracts of land surveyed into township and square mile sections; and (4) discretion was to be used in the disposition of lands affording other than agricultural wealth. Provision was made for the satisfaction of claims to military bounties and for the relief of certain refugees from Canada. Reservations of land were likewise set aside for the use of the Christian Indians settled on the Muskingum and for the satisfaction of claims arising under the Virginia deed of cession, but no measures were taken for the actual adjustment and settlement of those claims.[5] The federal land system was further developed by two acts passed in 1796 and in 1800. The first of these established the credit system, which afterwards proved very troublesome, and the second reduced the size of tracts to be sold and authorized the establishment of land offices in the West.

3. <u>The Pre-cessional Titles and Claims</u>.- The question of confirming the pre-cessional titles and claims was first brought squarely before Congress in 1788 when George Morgan

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[5] The territory of the United States was at that time confined to the region north of the Ohio.

and his associates, constituting one of the great land companies of the period, made application for a tract of land in the Illinois country on the Mississippi. The committee recommended

> That measures be immediately taken for confirming in their possessions and titles, the French and Canadian inhabitants and other settlers on those lands, who on or before the year 1783, had professed themselves citizens of the United States, or any of them, and for laying off the several tracts which they rightfully claim within the described limits.

According to further recommendations in the report, which was adopted, certain tracts of land were reserved, out of which a donation of four hundred acres was to be given to each head of a family. These donations were to be distributed by lot and immediate possession given, but they could not be alienated by the grantee until he had resided three years within the district after the distribution had been made. At the end of that time every such resident was to receive a complete title, and all lots not granted were to revert to the United States. The governor and secretary of the western territory, St.Clair and Sargent, in 1790 began the work of examining the titles and claims and directing surveys; in 1791 Congress, at the suggestion of these two officials, greatly increased the scope of confirmations, but in other respects did not change the law.

Nothing further was done regarding claims in the Old Northwest until a new system, one of the subjects of this study, was partially adopted in 1804.[6]

Meanwhile a peculiar situation had been developing in the Old Southwest. Both Great Britain and Spain had at various times exercised jurisdiction over portions of the country and had made land grants therein quite independently of any rights which Georgia might claim by reason of her charter. In the Treaty of 1783 between Great Britain and the United States the southern boundary of the latter country was placed at the thirty-first parallel. Spain, however, contended that Great Britian had ceded her the whole of the province of West Florida and that the boundary must be placed at thirty-two thirty. Having the advantage of possession, Spain continued to hold it and entered upon a policy of intrigue with the Anglo-American westerners to detach them from the United States. This state of affairs continued until 1795 when the Nootka Sound Controversy forced a general readjustment of diplomatic relations between the nations interested in North America. In that year Spain by treaty recognized

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[6] Treat, The National Land System, 202-210 and citations.

made for the confirmation of land titles and for the adjustment of conflicting claims.[10] Little was done, however, until the beginning of Jefferson's administration in 1801. He soon removed the men appointed by Adams to serve on the joint commission and selected others from his own cabinet; namely, James Madison, Secretary of State, Albert Gallatin, Secretary of the Treasury, and Levi Lincoln, Attorney General. By these men the dispute was quickly adjusted, and Georgia surrendered to the United States all claims to lands west of her present boundary.

One of the conditions of the cession was that all persons who, at the date of Jay's treaty with Spain, were actual settlers within the ceded territory should be confirmed in grants "legally and fully executed" prior to that date by either the British or the Spanish government. Such resident settlers were also to be confirmed in grants derived from any actual survey or settlement made under the laws of the State of Georgia.[11] The articles of agreement were duly ratified, and the United States thereby accepted a responsibility in regard to precessional titles and claims, of both foreign and domestic origin, which involved a far greater problem than existed in the Old North-west.

[10] American States Papers, Public Lands, I, 88-91.

[11] Ibid., 114.

the Old North-west.

II. The Formulation of a Confirmation Policy.

1. Findings of the Georgia Commission. Supplementary to their duty of adjusting the conflicting claims between the United States and Georgia, the commissioners representing the Federal government were authorized to inquire into and report upon the titles and claims of settlers and other persons to lands within the Mississippi Territory. Their report, communicated to Congress on February 16, 1803, showed clearly that the adjustment and settlement of pre-cessional titles had become a matter for serious consideration.[1] It was based, in part, upon the work of the new governor, William C. C. Claiborne. The results of his investigations will now be examined in some detail.

Complying with a request from the commissioners, Governor Claiborne published a proclamation inviting the people to file their claims with the clerks of the county courts. On the whole the results were disappointing. Some who held "fully and legally executed" titles had omitted to file them, either through inattention or from an unaccommodating disposition;

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[1] For the full report, see American State Papers, Public Lands, I, 120-144.

and others had avoided filing for fear of exposing the weakness of their claims and because of a report industricusly circulated by a few designing characters to the effect that the call for titles was treacherous.

The government had tried to inform himself as to the manner of obtaining grants from the British and Spanish governments. He found that about the same procedure had been followed under both governments, and described it in some detail. Because of the importance to this study, his description of the Spanish procedure together with the illustrative documents which he enclosed are given in full. The description is as follows:

> The applicant for land applied by petition to theSpanish governorngeneral of Louisiana, or the governor at Natchez. If the petition was granted, an order in writing was given to the surveyor general (which was called the warrant) to survey and put the petitioner in possession of a certain quantity of land, (which was named).
>
> On the return of the survey to the office of the Secretary for the province of Louisiana, at New Orleans, a formal patent with the plat and certificate of survey prefixed, was issued and signed by the governor general of the province of Louisiana. In this case, also delay in the intermediate steps sometimes prevented persons who had procured warrants of survey, and were in complete possession of the land, from obtaining perfect grants.

The form of petition used for making application for land was typified by the following:

> To the Governor:
>
> I, Charles Howard, resident in this district, with due respect, present myself before your worship, and say that, desiring to settle a plantation in order to reside

thereon, and labor to support my wife and five children, may it please your worship to grant me, for this end, a piece of land situated on Fairchild's creek, adjoining the lands of John Jones, it being vacant and causing no prejudice to any of the adjoining neighbors.

A favor which I expect from the distributive justice which you administer.

CHARLES HOWARD.

Natchez, August 28, 1794.

After due consideration the governor at Natchez forwarded the application with the following endorsement:

Natchez, January 28, 1795.

To the Governor General:

I consider this petitioner entitled to four hundred acres of land.

MANUEL GAYOSO DE LEMOS.

The governor then issued a warrant or order of survey in the following terms:

New Orleans, February 24, 1795.

The surveyor general, or particular nominated by him, will establish this petitioner on four hundred square acres of land in the place mentioned in the foregoing petition, being vacant and in no wise causing prejudice to the adjoining neighbors, with the express condition, to make the road and a regular clearance within the peremptory term of one year; and this grant be null, if, at the expiration of the precise space of three years, the land be not settled; nor shall he be enabled to alienate it within the same. Under which supposition he may make a survey thereof, and return it to me, to furnish the party interested with a corresponding title in form.

F. L. BARON D. CARONDELET.

Further papers concerning the grant to Charles Howard were not included. Perhaps, it was because of the incompleteness of his grant, which condition would not have been unusual.

The following papers were chosen by Governor Claiborne as typical of Spanish certificates of survey and of Spanish patents:

Don Charles Trudeau, Royal and Particular Surveyor of the province of Louisiana, &c.

I certify that there was surveyed and laid out in favor, and in the presence of Ebenezer Dayton, and with the assistance of both the adjoining neighbors, a tract of land of four hundred superficial acres, measured with the pole of the city of Paris, of eighteen feet, King's measure, in length, each acre forming a square of ten poles on each side, conformable to the use and practice of this colony, which tract of land is situated in the district of Natchez on the south bank of the River Homochitto, about sixteen miles to the southeast of the fort; bounded on one side by the land of William Henderson; on the other side by Nathan Swayzie; and on another by vacant land of his majesty's domain; the limits fixed agreeably to the lines of the plan, without paying attention to the variation, varying east eight degrees to the northeast, in which limits the trees and land mark, figured in the plan were marked for boundaries, in the actual survey thereof, conformably to the decree of the governor general, &c. dated the 24th day of January, 1789. In testimony of the foregoing declaration, I give the present certificate, with the figurative plan annexed, drawn agreeably to the survey made by Mr.William Dunbar, deputy surveyor, dated the 31st of December last.

April 6, 1791.

Given for a second expedition (expediente?) the 28th day of May, 1793.

CHARLES TRUDEAU, Surveyor Royal.

The patent which eventually issued is given as follows:

Dn. Francis Luis Hector Baron Carondelet, Knight of the Religion of St.John, Colonel of the Royal Armies, Governor, Intendant General, Royal Vice Patron of the provinces of Louisiana and West Florida, and Inspector of the veteran troops and militia of the same, &c., examined the foregoing actual survey, made by the surveyor of this province, Dn. Charles Trudeau on the possession which he had given to Ebenzer Dayton of the quantity of four hundred acres of

of land situated in the district of Natchez, on the south bank of the River Homochitto, about sixteen miles to the southeast of the fort; bounded on the one side by lands of William Henderson; on another by those of Nathan Swayzie; and on another by vacant lands of his majesty's domain, as is more fully shown in the preceding figurative plan; and finding it to be conformed to the rules of mensuration, and to the grant of the aforementioned adjoining neighbors, without causing them any prejudice, nor having made any opposition, but given their consent, which their assisting in the same operations proves, allowing them, we also do allow them; using the power which the King has given us, we grant in his royal name to the aforenamed Ebenezer Dayton, the aforesaid four hundred superficial acres of land, that as his own property he may dispose of them, and the profits thereof, being governed by the said survey, and observing the conditions provided and the regulations thereunto added.

We grant the present, signed with our hand, and sealed with our arms, and countersigned by the underwritten, his majesty's secretary of this government and intendancy, at New Orleans, the 29th day of March [May?] one thousand seven hundred and ninety-three.

F. M. BARON DE CARONDELET (L.S.)

By order of his lordship:
Andrew Lopez Armesto.

An analysis of the above documents shows that the settler had only to state in the simplest language his condition and his purpose in order to obtain an ample grant of land. Apparently, four hundred acres was the amount usually granted for the use of an average sized family. The warrant of survey authorized the surveyor to "establish" the petitioner on the land under the conditions that a road and regular clearance be made within one year, that settlement be made within three

years, and that the land be not alienated within that time. Upon the execution of the survey a certificate and plot describing the location and measurement of the land were issued; and when the conditions had been fulfilled these documents were according endorsed. It was then possible for the settler to obtain a patent whenever he should present his endorsed certificate and plot to the governor.

Since no time was specified within which the endorsed certificates and plots must be returned for the issuance of patents, many of the settlers neglected to take any further steps after they had secured warrants and certificates of survey; and in some instances they did not go to the trouble of having the surveys made. When the Spanish treaty of 1795 definitely established the boundary at the thirty-first parallel, some of those who held incomplete Spanish titles to lands north of that line made haste to obtain patents before the evacuation; while "others trusted entirely to the justice and liberality of the United States to make valid in law what they considered a perfectly equitable title." There were also those who had not taken any steps toward securing a grant before the treaty. To such as were in favor, the Spanish officials issued both warrants of survey and patents. Some of these were antedated, others not; and Claiborne stated that although none

of those antedated had, to his knowledge, been filed, yet no doubt was entertained of their existence. In fact they were reported to be of great extent and were supposed to cover much valuable land near the settlements.

In addition to those claiming lands under British and Spanish titles there were many squatters who had settled upon vacant lands; and in conclusiog his letter to the commissioners Governor Claiborne made for them a special plea. He said,

> I do sincerely hope that these citizens may be secured in their improvements, and that the Government will sell out the vacant lands in this district upon moderate terms, and in small tracts, to actual settlers. If this policy is not observed, much distress will attend many of the settlers, and the certain effect will be their leaving the territory in disgust, to become subjects in a country where heretofore the most flattering invitations have been offered to the poorer class of industrious citizens, by bestowing upon every applicant, without price, portions of the richest land, proportioned to the extent of their families. The present farms of these settlers would then probably fall into the hands of rich speculators, either in this district or from the United States.
>
> Thus we may lose a considerable portion of our present population, and the further increase of our numbers be retarded by the best and most convenient spots being monopolized by men possessing large tracts of unoccupied lands. The consequence would be, that this the most distant and infant settlement of the United States, at present insulated and defenceless, would be rendered more weak and defenceless by the banishment of the poorer class of white citizens, and the introduction of a few wealthy

characters, with a large increase of negroes; a description of inhabitants already formidable to our present population.

Such arguments as these no doubt did much in later years to make Congress more liberal in the disposition of the public lands and influenced legislation regarding the confirmation of claims derived from Great Britain, France and Spain.

On the basis of the information contained in Governor Claiborne's report and in certain petitions from the claimants, the commissioners were able to make a statement concerning the origin and nature of the claims to be adjusted.

The claims to lands within these boundaries [defined in a preceding paragraph] are derived either from the British Government of West Florida, from the Spanish Government, from occupancy and settlement, or from the State of Georgia.

The British governors of West Florida, after the boundaries of that province had been extended as far north as the parallel of latitude which crosses the Mississippi at the mouth of the River Yazoo, granted lands south of that parallel, until the year 1781, when the province was conquered by Spain.

A great portion of the lands granted in that manner has since been regranted by the Spanish Government; several tracts have continued in the occupancy of the original granttees or of their representatives; and several remain unoccupied, or are inhabited by persons who have no other claim but that of possession.

The grants of the Spanish Government appear to have been confined to persons actually residing on the lands; but they were made indiscriminately on every unoccupied tract, whether the same had been previously granted by the British Government or not; nor did they discontinue

making concessions, even after Spain had, by the treaty of October, 1795, recognized the right of the United States to the whole territory north of the thirty-first drgree of north latitude.

Until the evacuation, which was delayed for nearly two years, had taken place, grants were issued, sometimes bearing their real date, and sometimes, as is alleged, antedated.

The confirmation of British and Spanish grants "legally and fully executed" prior to October 27, 1795 had been provided for by the articles of agreement with the State of Georgia. Incomplete titles were not mentioned, but it was evident that in justice they must be confirmed and completed. Titles of Spanish origin dated subsequent to the treaty presented a curious problem involving the question of recognizing the validity of Spain's jurisdiction over the territory. The fact that they had been made by Spanish officials rendered it especially difficult; and there was always the danger that innocent persons might suffer, for the fraudulent practices necessitated a test of the validity of every document bearing a date prior to October 27, 1795.

Realizing that it would require more correct information to enable them to offer a plan more satisfactory to themselves, the commissioners with diffidence submitted the following recommendations to the consideration of Congress:

1. That persons who had received orders of survey before October 27, 1795 and were resident in the Territory on that date should be confirmed in their claims to those tracts of land then actually cultivated and inhabited, in the same manner as if their title had been completed; provided, that the person in whose favor the order had issued was of full age at the time of its date.

2. That every head of a family and every single person of twenty-one years of age, who did not reside with his parents, who was a resident of the Territory when the Spaniards evacuated the country, but who claimed no land under British or Spanish grants and did on that day occupy and cultivate a tract of land not otherwise claimed, should be confirmed in the possession of such tract, not exceeding 640 acres. In other words, actual settlers, at the time of the evacuation, who claimed no land under a British or Spanish grant, were to be given 640 acre donations.

3. That every head of a family who resided in the Territory on the day that Georgia ratified the articles of agreement with the United States and on that day occupied and cultivated a tract of land not otherwise claimed should be given pre-emption rights to 640 acres.

In order to carry out the articles of agreement with

Georgia and the foregoing recommendations it was suggested that commissioners be appointed at a fixed salary to go to the settlements with power to examine and decide on the claims. They were also to be authorized to issue certificates stating, as the case might be, that the party was entitled to the land or to a preemption right. No patents, however, were to issue until the land had been surveyed and all conflicting claims settled. To compel the presentation of claims and to keep the business from dragging through an unreasonable length of time it was suggested that all claims not filed within twelve months after the passage of the act should be forever after barred.

After some amendment a bill, corresponding in its leading features with the above plan, passed and became the Act of March 3, 1803 for "regulating the grants of land, and providing for the disposal of the lands of the United States, south of the State of Tennessee."[2] This was the "first carefully drawn act for the confirmation of foreign titles" and was a great improvement on the method used in the Old Northwest.[3]

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[2] For the text of the act, see Laws of the United States, III, ch.340, 546-553.

[3] Treat, The National Land System, 210.

2. Leading Features of the First Confirmation Act.

The first section of the Act of March 3, 1803 provided that every person or persons, and their legal representatives, resident in the Mississippi Territory on October 27, 1795, who had prior to that day obtained a British or Spanish warrant or order of survey for lands in that Territory to which the Indian title had been extinguished, and who actually inhabited and cultivated such lands on that date, were to be confirmed in their claims in the same manner as if their titles had been completed; provided, however, that the person in whose name the warrant or order of survey had been issued was, at the time of its date, either the head of a family or above twenty-one years of age. It will be noted that in addition to having obtained a British or Spanish warrant or order of survey before the signing of the treaty of 1795 the claimant must, on October 27 of that year, (1) have resided in the Mississippi Territory and (2) have actually inhabited and cultivated the lands claimed. The confirmation was based, therefore, on the acts of the claimant as a settler rather than on any papers he might hold. It was quite possible that some holders of warrants issued before the required date might not be able to satisfy these checks imposed by the United States, for, as has been seen,

the Spanish government had allowed three years for settlement; but it was believed that such cases were comparatively few. The requirement that the original grantee must have been either the head of a family or above twenty-one years of age at the time the grant was made was another vulnerable point in the law, for there is no evidence in the report of the commissioners that the Spanish or British governments had made such limitations.

The second section provided that every person, or the legal representative of every person, who, being either the head of a family, or twenty-one years of age, did, at the time of the Spanish evacuation, actually inhabit and cultivate a tract of land to which a stronger claim did not exist should be granted 640 acres of land; but this donation was not to be made to any person who claimed any other tract of land in the said territory by virtue of any British or Spanish grant, or order of survey, and not more than one such tract was to be granted the same person. This section was enacted to cover the case of those who had obtained titles from the Spanish authorities subsequent to the signing of the treaty. These titles were given no recognition; and the provision was intended to induce the settlers to waive them

for a donation patented by the United States.

The third section provided that every person who, being the head of a family or above twenty-one years of age, at the time of the passage of the act, inhabited and cultivated a tract of land not claimed under the preceding sections of the act, by a British grant, or under the articles of agreement and cession with Georgia should be entitled to preference in becoming the purchaser from the United States.

The fourth section authorized the establishment of two land offices within the Territory.

All persons claiming lands by the first three sections of the act or by the articles of agreement between the United States and Georgia were required to file with the registers of the land offices notices of their claims together with all title papers on or before the last day of March, 1804. Neglect to comply with this requirement would make the title void and forever bar it from further consideration.

For the purpose of ascertaining the rights of persons claiming lands under the articles of agreement between the United States and Georgia, or under the first three sections of the act, the President was authorized to appoint two persons from each land office who should act with the register

as a board of commissioners. They were to have power to administer oaths, examine witnesses, and to hear and decide in a summary manner all matters respecting the claims; and the decisions were to be final. In cases where the decisions were in favor of the claimants, the commissioners were further authorized to issue certificates, which were to be recorded by the register of the land office on or before January 1, 1805. Certificates confirming Brisish and Spanish grants "fully and legally executed" amounted to a relinquishment forever on the part of the United States to any claim whatever to such tract of land. Others specified whether the claimant was entitled to a patent or to preemption rights. Claims which the commissioners had no power to confirm were to be reported upon; and Congress made a reservation of public land for the satisfaction of all which might thenceforth be recognized as valid.

For the safe-keeping of the papers and evidence produced and for recording their proceedings, the board were respectively authorized to appoint a clerk, whose books and papers, on the dissolution of the boards, should be transmitted to the office of the Secretary of State.

It was further provided that a surveyor should be appointed for the region south of the State of Tennessee

and that all lands granted by the commissioners should be surveyed at the expense of the grantee according to the tenor of the certificates issued.

3. Events and Influences of the Year 1803.- Congress had hardly adjourned in the spring of 1803 when it became known that Jefferson had brought about the acquisition of Louisiana by purchase. This transaction was the final solution of the old difficulty over the free navigation of the Mississippi, but it proved to be of greater significance than the removal of a barrier at the mouth of that river. A domain of unknown extent was added to the territory of the United States. Parts of the territory were already settled, and the inhabitants held property rights derived from the French and Spanish governments. This condition was fully recognized in the treaty of cession. By its provisions "The adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, . . . not private property" became the property of the United States government, and the inhabitants were to "be maintained and protected in the free enjoyment of their liberty, property, and religion."[4]

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[4] American State Papers, Foreign Relations, II,507. The italics are mine.

These guarantees were proclaimed to the people of Louisiana on the day of actual transfer at New Orleans, December 20, 1803.

As soon as the Spanish officials had news of the treaty they resorted to the same method of making fraudulent land grants as had been followed in the Mississippi Territory. This serious situation became known to Secretary Gallatin through "various and authentic channels." A letter from the Mississippi Territory, dated September 8, stated that Spanish officers were daily making extensive surveys and disposing of large tracts, some even sixty miles square, at reduced prices. Another from New Orleans, September 29, announced that the intendant, foreseeing a cession of West Florida, had opened a sale and was believed to be issuing orders of survey for three or four hundred thousand acres. The most specific and definite information came from Kaskaskia. The following is an extract of a letter from that place, written October 18:

Dear Sir: You have no guess how the United States are imposed on by the Spanish officers, since they have heard of the cession of Louisiana: grants are daily making for large tracts of land and dated back; some made to men who have been dead fifteen or twenty years, and transferred down to the present holders. These grants are made to Americans, with a reserve of interest to the officer who makes them; within fifteen days the following places have

been granted, to wit: forty-five acres choice of the lead mines, sixty miles from this, heretofore reserved to the Crown of Spain; the iron mine on Wine creek, with ten thousand acres around it, about eighty miles from this place, and formerly reserved by the Crown of Spain; sixty thousand acres, the common touching St.Louis, heretofore given by the Crown of Spain to the inhabitants of the village; the tin mines, (though of doubtful value,) and fifteen thousand acres adjoining; and many other grants of ten, fifteen, twenty, and thirty thousand acres have been made. I could name persons as well as places.

Additional information was received from Captain Amos Stoddard at Kaskaskia, at a later date, but his letter will be referred to in another connection.

Meanwhile, those in the Mississippi Territory who were dissatisfied with the act of March 3 had been taking steps to secure its modification. As soon as Congress had time to consider the matter several memorials and petitions were presented to the House, read, and referred to a committee.[5] They called for nothing short of a repeal of all the checks which Congress had provided for the detection of antedated and otherwise fraudulent claims.[6] In regard to the requirement of habitation and settlement, it was represented that the people had been in the habit of considering titles founded on warrants of survey accompanied by plats and certifi-

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[5] Annals of Congress, 8th cong., 1st sess., 624.

[6] See next citation.

cates as absolutely valid, although no patents had been issued and no improvement or settlement made. Moreover, some lands which had been cultivated and improved for many years had by the rotation of crops and the "necessary repose to be given to the soil" been left uncultivated in the year 1795. Relative to the age or head of family requirement, it was stated that parents had frequently preferred securing grants for their children direct from the Spanish government, that their lands were held by the usual warrants of survey, and that large improvements had been made. To deprive such families of their grants would be to reduce them "to misery and to beggary." It was also held that the clause prohibiting the issuance of certificates for lands east of the Tombigbee river was unjust, for a considerable number of persons in that region held titles issued in the usual manner to lands to which the Indian title had long been extinguished.

The committee reported on January 25, 1804, and recommended that, since claims not settled or improved were not recognized by the law, and since it expressly prohibited the confirmation of grants originally made to minors not heads of families, further consideration of that part of the subject be postponed. This meant that the committee was flatly refus-

ing to consider the flimsy pretexts of those apparently interested in fraudulent titles and claims. A resolution was offered, however, to the effect that the boards of commissioners be instructed to make a full report to the Secretary of the Treasury on claims derived from grants originally made to minors not heads of families; and it was suggested that the commissioners should be able to judge whether lands had been entirely abandoned or left temporarily uncultivated. Investigation showed that the reasons for refusing to allow the issuance of certificates for lands east of the Tombigbee no longer existed; and the committee recommended that the prohibition be repealed.[7]

On January 5, Gallatin had communicated to the House a letter from one of the boards of commissioners in which they pointed out certain defects and omissions in the law.[8] The date on which the Spanish troops evacuated the region north of the thirty-first parallel was found to have been March 30, 1798, instead of some time during the previous year, as contemplated in the law. With regard to their powers, the commissioners wrote,

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[7] American State Papers, Public Lands, I, 169-170.

[8] Ibid., 171-172.

The sixth section gives the board of commissioners power to administer oaths and examine witnesses, but no express power to enforce their attendance; nor are they allowed executive officer to attend the board or execute process, though the law has submitted to their determination more important matter than, perhaps, comes before any court in the Union. The board are of opinion, from the best information they can get, that many of the claims to be made are fraudulent, and to prove which will require a variety of testimony, which they are informed exists in the territory, and, if not procured in opposition to those false and fraudulent claims, will leave but little land for the United States. And here the board would also suggest the propriety of the appointment of some person, whose business it shall be to procure this evidence, and to advocate the rights of the United States; and at the same time that the board suggest this, they declare their intention to use every means in their power to secure the interest of the United States, as well as to do justice to the individuals; but the impropriety, if not impossibility, of their acting in this double capacity of judge and advocate, will, it is presumed, be obvious to every person conversant in business of this kind.

The commissioners also reported that most of the title papers were in the Spanish language, and that they were forced to prevail upon the claimants to have them translated before they produced them for decision. The danger of such a practice was easily perceived; and it was suggested that the government employ some person capable of making an official translation on oath.

Secretary Gallatin was fully alive to the importance of pending legislation regarding confirmations in general and had enclosed the letters from New Orleans, Mississippi Territory, and Kaskaskia, referred to above, with that from

the commissioners. He said,

> The suggestions of the commissioners on the subject of fradulent and antedated Spanish grants, seem to deserve particular consideration. It is ascertained. . . that the same frauds are attempted on a much larger scale in Louisiana;and it appears desirable that principles should be adopted in relation to those grants in the Mississippi Territory, which may hereafter be applied to similar cases in the newly acquired territories.

He further endorsed practically all of the recommendations of the commissioners and suggested that, in all cases where the land was not actually occupied at the time of or within a limited period after the date of the grant, the grant should not be taken as conclusive evidence, and that the burden of proving its validity should fall on the claimant.

4. Further Development of the Confirmation Policy.- In the meantime the Senate had framed a bill for "erecting Louisiana into two Territories, and providing for the Temporary Government thereof." The reports of extensive land frauds in Louisiana had been impressed on the minds of the Senators, and a provision was inserted rendering every person settling on lands of the United States liable to a thousand dollar fine and one years imprisonment. While the bill was before the House, the President sent in Stoddard's letter from Kaskaskia. It was as follows:

> Sir: The attorney general of the Indian territory, who, a few days since, visited the Louisiana side, has given me

some information which I think it my duty to communicate.

Attemps are now making to defraud the United States. As nearly as can be estimated, two hundred thousand acres of land, including all the best mines, have been surveyed to various individuals in the course of a few weeks past. All the official papers relative to these lands, bear the signature of M------, the predecessor of the present lieutenant governor. He now commands a Spanish garrison in the neighborhood of New Orleans. To understand the nature of this fraudulent transaction, it will be necessary to state the mode of acquiring titles. The settler applies to the commandant by way of petition, and prays a grant of certain lands described by him. At the bottom or on the back of the same petition, the commandant accedes to the prayer, and directs the surveyor to run out the lands prayed for. This petition and order, together with the proceedings of the surveyor, entitle actual settlers to grants on application to the proper officer at New Orleans. But the fact seems to be that the great body of the people have no other title to their lands than what results from their original petitions, orders, and surveys. Very few of them have taken the trouble to procure grants. Under these circumstances, they seem to have an equitable claim to their lands, and really expect a confirmation of them by the United States. This state of things has suggested the possibility of a successful fraud; and the progress of it will probably turn out to be this: M.---- (who, when commandant, was certainly authorized to cause surveys of land to be made to settlers) has been prevailed on to put his signature to blank papers: to suffer some persons in this quarter to insert the necessary petition and order of survey over it, and to affix the necessary dates. The persons concerned in this transaction probably expect that, as the dates of these spurious papers are confounded with those of a just nature, our Government cannot, or will not, attempt to distinguish the one from the other. It is now about five years since M.------ was commandant of Upper Louisiana, to which time these papers appear to be antedated. Extensive surveys have been made, and are now making, under his orders, and many of them to persons who have not resided two years in the country. It is also understood that each purchaser gives forty dollars for every one hundred or four hundred acres, and that this sum is divided between three persons, the projectors of the

speculation.[9]

It was now apparent that the Senate's action in penalizing unauthorized settlement would not be adequate to meet the occasion and was, moreover, too harsh in character. Could there not be found some means of eliminating fraudulent claims without danger of penalizing persons entirely innocent of evil intentions? With this question evidently in mind, G.W. Campbell, of Tennessee, moved to strike out that part of the bill. This produced a debate of some length, unforfunately not given in the Annals of Congress, and in the end the motion was lost.[10] Rhea, also of Tennessee, offered a new section declaring all grants made on or subsequent to the date of the Treaty of San Ildefonso, and likewise every act and proceeding subsequent thereto of whatever nature, toward obtaining any grant, title, or claim to public lands, null and void, and of no effect, in law or equity.[11] Early, of Georgia, objected to Rhea's section

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[9] Stoddard to Dearborn, January 10, 1804, in American State Papers, Public Lands, I, 177.

[10] Annals of Congress, 8th cong., 1st sess., 1185-1189.

[11] Ibid., The Treaty of San Ildefonso was that by which Spain, on October 1, 1800, retroceded Louisiana to France.

On the ground that "It declared null and void, not only all grants or titles obtained since the period of cession, but likewise all grants or titles acquired subsequently to the Treaty of ~~St~~ San Ildefonso, or, in other words, during the time the territory belonged to France." He also called attention to the fact that such an act was judicial in character and therefore not within the province of a legislative body. The reports of frauds, however, had caught the ear of a large majority who, caring too little for the real merits of the objections offered to Rhea's new section, finally adppted it by a vote of sixty yeas to forty-two nays. If any of the members of the House had voted with the majority through indifference or petty jealousy, they doubtless felt the rebuke administered by the Senate in promptly rejecting the Rhea amendment by a vote of twenty-seven to one. On the next day the House refused to recede from the amendment by a vote of only forty-six to forty-five, which indicated a total ballot of eleven less than that by which the measure had been originally passed. Other House amendments had been rejected by the Senate, and a conference was held. Nicholson, of Maryland, who had reluctantly voted for the Rhea amentment, and both Rhea and Early were appointed man-

agers for the House.[12]

As finally revised by the conference and adopted by both houses the bill became the Act of March 26, 1804. All grants for lands, the title of which was on October 1, 1800 in the Crown, government of nation of Spain, and every act and proceeding subsequent thereto, towards obtaining any grant, title, or claim to such lands were declared null and void, and of no effect in law or equity; provided, nevertheless, that nothing in the section should be construed to make null and void the grants, or acts and proceedings of bone fide settlers granted and sanctioned by the laws, usuages, and customs of the Spanish government, if settlement in either case was made prior to December 20, 1803. Such a grant, however, would entitle such a settler to no more than one mile square, together with such other and further quantity as had been allowed for the wife and family. Any further settlement on lands belonging to the United States, or any attempt to survey or otherwise mark boundaries on such lands was made punishable by a fine of one thousand dollars and imprisonment not exceeding twelve months. The President was, moreover, authorized to

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[12] Annals of Congress, 8th Cong., 1st. sess., 1206-1208.

use military force to remove persons attempting settlement on the lands of the United States.[13]

Another provision was inserted authorizing the President to stipulate with the Indian tribes owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes should remove and settle thereon. While not strictly pertinent to the present study, the above provisinn is, nevertheless, interesting as an element in the Louisiana land question; for it was sure to be vigorously protested by the inhabitants of that region.[14]

So far as French and Spanish land titles in the Louisiana Purchase were concerned, the act was wholly negative in character, for no provision whatever was made for their confirmation.

On March 5, two other bills had been introduced in the House, - one to supplement the Act of March 3, 1803, the other, in part, to introduce boards of commissioners into

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[13] Laws of the United States, III, ch. 391, sec. 14, p.609.

[14] See Abel, Annie Heloise, The History of Events Resulting in Indian Consolidation West of the Mississippi, in Annual Report of the American Historical Association, 1906, I, 249.

Indian territory to settle French and British claims in that region. They were drawn largely in accordance with the findings of committees and were passed by both houses without any considerable amendment or difficulty.

The supplementary act extended the time for registration in the Mississippi Territory, provided for the employment of an agent to act as attorney for the United States, an official translator, and an assistant clerk for each of the boards, and repealed the restriction against issuing certificates to claimants of lands located to the east of the Tombigbee river. Where lands were claimed by virtue of a complete Spanish or British grant, in conformity with the articles of agreement and cession between the United States and Georgia, it was not necessary for the claimant to have any other evidence of hisclaim recorded except the original grant or patent, together with the warrant or order of survey and the plot; but all the subsequent conveyances of deeds were to be deposited with the register, to be laid by him before the commissioners. The jurisdiction of the commissioners appointed to adjust claims west of the Pearl River was extended over those east of that river; and after the first day of December they were not to adjourn for a longer time than three days until their busi-

ness was finished. When any Spanish grant, warrant, or order of survey was produced for lands which were not at the date of such papers or within one year thereafter inhabited, cultivated, or occupied by, or for the use of the grantee, or when either of the boards suspected the papers to have been antedated, the commissioners were not bound to consider such grant, warrant, or order of survey as conclusive evidence of title, but might require such other proof of its validity as they might deem proper. Thus congress made some allowance for the rotation of crops and at the same time adhered strictly to the spirit of the conditions expressed in the Spanish warrants. It was evident that the United States would consider the land "occupied" when these conditions had been fulfilled. The boards of commissioners were required to make a full report to the Secretary of the Treasury on all claims suspected to be antedated or otherwise fraudulent, which report was to be laid by him before Congress for their final decision. Similar reports were to be made concerning claims for lands held by warrant of survey and improvement where the claimants were minors, not heads of families, at the time such warrants were issued.[15]

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[15] Laws of the United States, III, ch.414, pp. 626-629.

The act "making provision for the disposal of the public lands in the Indiana Territory; and for other purposes" extended the powers of the surveyor general over all the public lands in that region and three land offices were established at Detroit, Vincennes, and Kaskaskia. Each of the offices was to be provided with a register and receiver of public moneys, who, in addition to their usual duties were to act as a board of commissioners for the purpose of examining French and British claims originating from "legal" grants made prior to the treaties of 1763 and 1783 respectively. They were given all the powers accorded commissioners in the Mississippi Territory except that of issuing certificates; it was required instead that full reports of their decisions should be laid before Congress for final action. There were no provisions for the employment of agents or official translators, the confirmation of incomplete titles, or the granting of donations to settlers; and pre-emption rights were allowed only to those who had made written contracts prior to January 1, 1800 with John Cleves Symmes or his associates.[16] At the next session, however, Congress

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[16] Laws of the United States, III, ch.388, pp.596-603

passed a supplementary act permitting persons claiming lands "by virtue of actual possession and improvement, or for any other account whatever" to have evidence recorded; and the commissioners were authorized to take such evidence into account. All decisions, however, were as before, to be subject to review by Congress.[17] It is seen therefore, that the commission system, as developed in the Mississippi Territory, was only partially applied in the Old Northwest, where the problem of confirmations was small compared with that in the Old Southwest and in the Louisiana Purchase.

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[17] Laws of the United States, III, ch. 457, pp. 670-673.

III. The Application and the Development of the Confirmation Policy in the Louisiana Purchase, 1805 - 1857.

1. Popular Discontent and Agitation in 1804: Provision for the confirmation of Titles and Claims to Land. One can well imagine the feelings of the people of Louisiana while they were being arbitrarily transferred from the jurisdiction of one government to that of another and yet another within the course of a few years. They were by no means enthusiastic about the last transaction, by which they had been sold to the United States.[1] Furthermore, there were not wanting adventurous and scheming Americans among the French laboring to trouble the waters in which they meant to fish. It is not surprising, then, that objections were immediately made to the various provisions of the act of Congress providing a temporary form of government.

During the summer of 1804, public meetings were held in the Territory of Orleans, and a formal remonstrance,

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[1] Gayarré, History of Louisiana, IV, 1 - 3.

said to have been drawn up by Edward Livingston,[2] was signed by prominent citizens for presentation to Congress at its next session. It was eloquent in its objections to the division of Louisiana into two territories, to the appointment of the governor and the legislature by the President, and to the prohibition of the importation of slaves, but no reference was made to the section affecting land grants or to that authorizing a removal of the Indians to the west side of the Mississippi. These points were amply covered, however, by a remonstrance and petition from Upper Louisiana, now called the District of Louisiana.

In the District of Louisiana there were many Americans who had taken up land grants under the liberal inducements offered by the Spanish government in 1797 when it desired to establish buffer settlements in Upper Louisiana to repel an expected invasion by the English from the north. The

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[2] Madison to Monroe, November 9, 1804, in Letters and Other Writings of James Madison, II, 208-210. Livingston arrived in New Orleans, February 7, 1804, and at once began the practice of law among the Creoles, for he was familiar with French. For further details concerning his life see Hunt, Life of Edward Livingston.

Americans now feared lest their titles, many of them incomplete should not be recognized by the United States.[3] Mass meetings were held in the different settlements and delegates elected to a general convention. In addition to the objections raised to the division of Louisiana into two territories, and the provisions relating to the form of government, it was pointed out, that the Spanish government had allowed three years for settlement after " a full or incipient grant" had been made and that the United States had not taken possession of Upper Louisiana until March 10, 1804, only sixteen days before the passage of the act providing for the government of the province. Therefore, it was urged that the clause declaring null and void all grants made subsequent to the Treaty of San Ildefonso, October 1, 1800, was ex post facto in character and therefore unconstitutional. In regard to the removal of the Indians the petitioners said,

> Had the United States bound themselves to exterminate from the face of the earth every inhabitant of Louisiana, your petitioners do not conceive, that they could have taken a more effectual step towards the fulfillment of the engagement, than the measures contemplated by the fifteenth sec-

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[3] Violette, Early Settlements in Missouri, in Missouri Historical Review, I, 45-48. It is hardly necessary to remark that those interested in fraudulent transactions would naturally take an active part in politics.

tion of the law, respecting the district of Louisiana. But, by the treaty with the French Republic, the United States have engaged to maintain and protect us in the free enjoyment of our liberty and property. Great God! a colony of Indians to protect our liberties and properties! [4]

It is obvious that there ~~is~~ was no intention on the part of the United States to oppress the people ~~in the~~ of Louisiana. ~~Purchase.~~ By its own provisions the act establishing a temporary government was to continue in force for only one year after October 1, 1804, when it became effective, ~~and~~ or to the end of the next session of Congress. Jefferson, in his message on November 8, 1804, stated that the act, having been regarded as but temporary and open to such future improvements as the circumstances of "our brethren" might suggest, would of course be a subject for consideration. He also submitted a report showing the necessity of immediate inquiry into the occupation and titles of the lead mines in the District of Louisiana.[5] Congress therefore made certain changes in and further provisions for the government of the

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[4] For the text of the petitions, see Annals of Congress 8th cong, 2d sess., 1597 - 1820.

[5] Ibid., 11- 14.

new territories, and extended to them the commission system used in the Mississippi Territory for ascertaining and adjusting the titles and claims ~~of~~ to land.

2. The Confirmation Policy as First Applied in the Louisiana Purchase.—The Act of March 2, 1805 "for ascertaining and adjusting the titles and claims to land, within the Territory of Orleans, and the District of Louisiana" was simply an adaptation of the Act of March 3, 1803 "regulating the grants of land, and providing for the disposal of the lands of the United States, south of the State of Tennessee," and its supplement of March 27, 1804, with such modifications and further provisions as the situation in the Louisiana Purchase seemed to demand.

The first section provided that those who, on October 1, 1800, were resident within the territories ceded by France to the United States and who had, prior to that date obtained any duly registered warrant or order of survey for lands to which the Indian title had been extinguished and which were actually inhabited and cultivated by such persons, were to be confirmed in their claims to such lands in the same manner as if their titles had been completed. No such incomplete titles, however, were to be confirmed if made to a minor, not the head

of a family; nor unless the conditions and terms on which the completion of the grant might depend had been fulfilled. The two new limitations imposed by this section of the act, aside from the date, October 1, 1800, were (1) that the warrants must have been "duly registered"[6] and (2) that the conditions and terms expressed therein must have been fulfilled.

The second section provided that every person, except a minor, not the head of a family, who had, prior to December 20, 1803, with permission of the proper Spanish officer, and in conformity with the laws, usuges, and customs of the Spanish government, made an actual settlement on a tract of land not claimed by virtue of the preceding section, or of any Spanish or French grant made and completed before October 1, 1800, and during the time the government which made such grant had the actual possession of the said territories, and who did, on the said December 20, 1803, actually inhabit and cultivate the said tract should be granted a donation of one mile square together with such other quantities as had been allowed for the wife and family agreeably to Spanish

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[6] The reason for the imposition of this limitation will appear later. See p. 55. ~~below.~~

laws, usages, and customs. This donation was not to be made to any person claiming any other tract by virtue of and French or Spanish grant. This section differed from the corresponding one in the act relating to the territory south of the State of Tennessee, (1) in that the settlement must have been made with the permission of the proper Spanish officer and in conformity with Spanish law, usage, and custom; and (2) in that the usual allowance for the wife and family was to be granted in addition to the one mile square.

For convenience in ascertaining the titles and claims to land, the Territory of Orleans was divided into two districts and the President was authorized to appoint registers whose duties and authorities were the same as those of registers in the land offices north of the Ohio and above the mouth of the Kentucky. A recorder of land titles was likewise to be appointed for the District of Louisiana. It was provided (1) that every person claiming lands by virtue of any legal french or Spanish grants made and completed before October 1, 1800 and during the time the government which made such grant had the actual possession of the territories might, and every other claimant, including each one holding papers dated subsequent to October 1, 1800, must, before March 1,

1806, file notices of the nature and extent of this claim, together with a plat of the tract or tracts claimed; and should also on or before that day, file, for the purpose of being recorded, every grant, order or survey, deed, conveyance, or other written evidence of the claim. In the case of complete grants, however, it was not necessary for the claimant to have any other evidence recorded but the original grant or patent, together with the warrant or order of survey and the plat; but all the other conveyances or deeds must be filed for the use of the commissioners when they should take the claim into consideration. Neglect to comply with the requirement of filing would result in the forfeiture of all rights derived from the first two sections of the act; and ~~none of~~ the papers or evidence ~~which should have been~~ were not recorded as directed would never ever be considered or admitted as evidence in any court of the United States against any grant derived from the United States.

NOTE ~~The registers and recorder were to begin their duties on or before the first day of September.~~

For the purpose of ascertaining the rights of persons claiming "under any French or Spanish grant as aforesaid, or under the first two sections of this act," the President

was authorized to appoint two persons for each district who were to act with the recorder or register as a board of commissioners. They were to meet at places to be designated by the President on or before the first day of December and were not adjourn to any other place, nor for a longer period than three days, until March 1, 1806 and until they had completed their work. Each board of commissioners was given power to administer oaths, to compel the attendance of ~~and examine~~ witnesses ~~and such other testimony as might be adduced~~, to demand and to obtain from the proper officials the public records, to make transcripts of the same, and to decide "in a summary way, according to justice and equity," on all claims properly filed and on all complete French or Spanish grants, the evidence of which, though not filed, might be found on the public records. ~~But~~ The boards were expressly forbidden to recognize any grant or incomplete title bearing date subsequent to October 1, 1800, or to make any decision thereon. It will be seen that The new powers granted to the boards were those to compel the attendance of witnesses and to demand access to the public records. The decisions of the boards, however, were not to be final, but were to be laid before Congress; and no provision was made for the issuance of certificates. In cases where a ~~When any Spanish~~ grant, warrant, or order of survey was produced for lands which were

Kentucky, ~~was chosen~~ for the Western District; ~~and~~ James Lowery Donaldson, a Baltimore lawyer, was appointed Recorder for the District of Louisiana. Gurley, from the beginning, held a very responsible position, for New Orleans, as capital of the province, contained the public records. ~~His first work~~ He was first directed to obtain specifications for the division of the Territory of Orleans into the two districts and to inquire into the time and expense necessary for obtaining abstracts of the land title records. On June 9 he wrote,

> . . . the records of grants and orders of survey are distinct from the Records of surveys actually made. The latter are now in the hands of the old Surveyor Genl of province from the year A.D. 1788, when all the Records in his office were consumed by fire. Transcripts from these as well as from the former can be obtained at a small expense - They are all however in a very disorderly state and extremely imperfect.[7]

Gurley also began preparations to open his office. He found that a translation of the confirmation act into French was indispensable. This was accordingly made, and copies of the law in both English and French were sent to the principle officials. By a circular letter each of these officials was requested to aid in explaining to the people the general objects of the law and the advantages which would accrue from

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[7] Gurley to Gallatin, June 9, 1805. (Parker, Calendar, 7231).

a prompt and speedy compliance with its provisions.[8]

The administration at Washington was also fully alive to the importance of giving the confirmation act full publicity, for it was well known that there were two classes of people to be reckoned with -- those who were dissatisfied with the transfer and were unwilling to cooperate with the United States government or were suspicious of its intentions; and those, constituting a large element in the population, who were bent on defrauding the government and such people as could be cheated out of their rights by misrepresentation or by other means. It was necessary that the law should be strictly construed but administered in such a way as to pacify and conciliate those holding just claims. The people therefore were to be given to understand that, although Congress had placed some limitations on the confirmation of claims, their rights would be duly recognized as soon as more correct information could be gathered. These points were made clear in a letter from Secretary Gallatin to Register John Thompson before the latter left Kentucky to assume his duties in the Western District of Orleans. It was, part, as follows:

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[8] Gurley to Claiborne, July 25, 1805 (Parker, Calendar, 7256, enclosure).

It is enacted, by the 4th Section, that persons, claiming lands by virtue of legal French or Spanish grants, made before the 1st of October 1800, may file a notice of their claim, with the Register; but that persons, claiming, either under the two first sections of the Act, or under incomplete titles, shall do it, under penalty of their claim being forever barred. You will easily perceive, that the distinction is drawn from the different natures of the claims; that the first species is considered as already established and not wanting any confirmation from the Government of the United States; but it is necessary that the people should be also made to understand it; that they should know, that it is not intended to disturb their rights, founded on legal grants, and that the object of that first paragraph is, merely, to enable them to have their grants recorded in an American Office, if they shall think it expedient, and to prevent the possibility of the United States selling, through mistake, lands, which have already been legally granted. It is true, that persons, claiming lands under complete grants, dated after the 1st of October 1800, are included in the same class with persons, who claim under incomplete titles, and that there may exist some cases, in which such grants are not confirmed by the two first sections of the act. But it must be observed, 1stly, that such cases must be but few, - 2ndly, that, although Congress have not thought it proper, without having previously obtained more correct information, to confirm titles, or to assume principles, by which titles will be confirmed, beyond the extent embraced by the two first Sections, yet it cannot be doubted, that they will, on the recommendation of the Commissioners, confirm, hereafter, equitable claims, not embraced by those two Sections; and that this was their object, in requiring grants, dated after the 1st of October 1800, to be filed with the Register; otherwise, no notice of them would have been taken in the law - 3rdly, that, supposing that Congress should refuse to confirm some grants of that description, it will not preclude the claimants from their remedy in the Courts of law. Indeed, it is well known here, that the reason, which has induced caution in framing the act, was the knowledge of fraudulent grants, principally in Upper Louisiana; and I have thus early mentioned the subject to you, in order that you may embrace every proper opportunity to remove objections, and repel misrepresentations, which may be expected from persons interested in grants of a doubtful nature.[9]

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[9] Gallatin to Thompson, July 2, 1805 (Parker, Calendar, 7243).

On May 10 the commissioners, were appointed. They were, for the District of Louisiana, John B. C. Lucas, a Congressman from Pittsburg, and Clement B. Penrose, of Philadelphia; for the Eastern Distirct of the Territory of Orleans, Benjamin Sebastian and John Coburn of Kentucky; and for the Western Dittrict, James Tremble and Francis Vascher. Inasmuch as the boards were to exercise judicial functinns only, and as their duties were not to begin until the first of December, no instructions were given them at the time of their appointment, nor were they required to be on the ground before the month of November.[10]

The third, and perhaps the most important, group of officials appointed were the agents, or attorneys, whose specific duties were to oppose the confirmation of fraudulent and unfounded claims. The men chosen were Felix Grundy, of Kentucky, for the District of Louisiana; James Brown, of New Orleans, for the Eastern District of Orleans, and Allan B. Magruder, of Kentucky, for the Western District. Brown afterwards became United States Senator and

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[10] Gallatin to the commissioners for investigating land claims in Orleans and Louisiana territories, May 10, 1805 (Parker, Calendar, 7219).

Allan B. Magruder, a Congressman. Felix Grundy did not take up the work in the District of Louisiana, and William C. Carr appeared as agent for that district on December 20, 1805.[11]

These officials were instructed to learn the precise manner in which grants were made by the French and Spanish governments and the methods which had been adopted "to obtain colourable, though unfounded titles:" Large, unusual, or late grants were to be made the objects of particular investigation. Magruder's attention was called to two large grants on the Washita, made to Baron Bastrop and to Marquis de Maison Rouge; and Brown was directed to proceed with the work of having transcripts of the records made for the use of the other boards of commissioners. Certain copies, particularly those of claims in the District of Louisiana, were also wanted in Washington.[12] The situation in the District of Louisiana was peculiar, for it was there that the great

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[11] Houck, A History of Missouri, III, 44.

[12] Gallatin to Grundy, July 8, 1805 (Parker, Calendar, 3368, 7247). The duty of making transcripts had belonged to Gurley, the Register; but Gallatin had failed to receive his letter of June 9.

body of fraudulent titles had been issued. The Secretary therefore sent the following letter to the agent at St. Louis, calling his attention to the fact that only "duly registered" warrants or orders of survey were to be recognized.

In addition to my letter of yesterday, I enclose the copy of some information received on the subject of fraudulent grants in Louisiana, on which considerable reliance is placed, and, also, of a document, signed by Ant. Soulard, the former Surveyor of Louisiana, purporting to be a summary of the quantity of land granted in that district.

From the last document, it appears, that only 61,859 acres are grounded on what is called registered titles, and more than one million and half of acres on unregistered titles, said to be granted by the two last Governors. As that enormous difference, between old regular and late irregular grants, conveys a strong suspicion of fraud, it will be material to understand, with precision, what is meant by registered, and what are those registers on records, which afford no check on the late pretended grants. It is, also, proper, that you should be informed, that it was that document, which suggested the propriety of prefixing the words "duly registered," to the words "warrant or order of survey," in the 1st section of the Act for ascertaining and adjusting etc.

You will perceive, that, by the 6th section of the same Act, you are particularly directed to investigate the titles and claims to the lead mines. I have no other information on that subject, than what is contained in the enclosed pamphlet. 13

(b) Obstacles to the Administration. The obstacles to the administration of the act "for ascertaining and adjusting the titles and claims to land, within the Territory

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13 Gallatin to "The Agent," July 29, 1805 (Parker, Calendar, 3369).

of Orleans, and the District of Louisiana" proved to be such as the government had anticipated in the instructions to Register Thompson.[14] Gurley opened his office in New Orleans on the second Monday in July, but no claims were presented. On the twenty-fifth, he reported the situation to Secretary Gallatin and to Governor Claiborne and outlined a plan which he had in mind for the solution of the problem. To Secretary Gallatin he wrote,

> It is with regret that I am compelled to notice a disposition among the enemies of the Government to seize on this law as an engine by which to excite discontent among the people. It's objects are misrepresented particularly in the Country, and although not through the medium of the public prints yet in a manner more certain in this Country, where newspapers are read by few by private correspondence and personal communications.-
>
> It is under these circumstances that I have resolved to make a journey into the several Counties for the purpose of conversing with and explaining to the people the real objects of the law, of furnishing them with the proper forms and necessary instruction for entering their claims and generally, stating to them the requisitions of the law in such a manner as to remove their difficulties and doubts and induce them to a prompt compliance with it's provisions. [15]

His letter to Governor Claiborne was more specific with reference to the work of "the enemies of the Government." He said,

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[14] See p. 52 above.

[15] Gurley to Gallatin, July 25, 1805(Parker,Calendar, 7252).

[Already it [the law] is represented as intended to rob the people of their rights to destroy the equitable titles which exist in the Country and finally to become an instrument of the most vexatious oppression. Misrepresentations like these so directly at war with truth may undoubtedly be overcome - but in order to [do] this it is important to adopt the best and mo[st] appropriate means.16

The governor highly approved of Gurley's plan, in the following language:

I am persuaded that your presence in the several Counties and the explanation which you would make to the late act of Congress, relating to the Lands in this Territory, would tend to satisfy the Public Mind, and to defeat the Machinations of those few wicked Men among us, who labour incessantly to embarrass, and injure the administration. No pains ought to be spared, to acquire for the Government the general confidence of the Citoyens [Citizens], and in particular to convince them, that their rights for Land in this District, will be liberally confirmed, according to the equity of their Situation, and not to rigorous Law. With this object in view, I am of opinion, that your proposed visit to the Country may be rendered highly useful.17

The Register therefore set out on his journey, expecting to be absent from New Orleans about six weeks, but he was able to return at the end of four weeks and report that the people were generally disposed to comply with the provisions

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16 Gurley to Claiborne, July 25, 1805(Parker, Calendar, 7256, enclosure).

17 Claiborne to Gurley, July 28, 1805(ibid.).

of the law.[18]

Similar conditions of misinformation and discontent existed in the District of Louisiana. Copies of the law had not been distributed because there was no printing press, and Governor Wilkinson was informed as late as September 21 that none had reached the inhabitants of New Madrid and Arkansas. There was considerable excitement, thought to have been fomented by Moses Austin, in the lead mine district about St. Genevieve; and it had been found necessary to arrest Major Seth Hunt for failure to discharge his duty as an officer of the United States. It was also reported that "some of our erratics" were entering illicitly upon the public lands near the mouth of the river St.Francis and that higher up on the same river eight families had taken refuge

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[18] Gurley to Gallatin, September 8, 1805 (Parker,Calendar, 7281). Gayarré, in his History of Louisiana, IV, 116, gave Claiborne, instead of Gurley, credit for having originated the plan of touring the country in order to inform the people of the true intent of the law. Moreover, he did not quote the documents exactly as they appear in my transcripts made by the Carnegie Institution at Washington. The changes are of minor importance, but the practice is to be condemned.

with a strong tribe of Cherokee Indians. These intruders Governor Wilkinson proposed to remove by force, but would in the case of the latter, use such precautions as might "save disagreeable consequences."[19] To save "the poor and ignorant Settlers of the Territory" from "the rapacity of a band of Speculators, combined first to frighten and t the[n] to defraud them out of their rights," Governor Wilkinson found it advisable to issue a proclamation of warning and advice to the settlers not to sell their claims at a less price than their real value.[20]

Immediately after Gurley left New Orleans on his tour to quiet the fears of the people in regard to their land titles, trouble of another kind arose. News came to Governor Claiborne, that Morales, Spanish Intendant, had been instructed "by the King of Spain to dispose of all vacant lands in East and West Florida, and to open his office in

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[19] Wilkinson to Madison, September 21, 1805 (Parker, Calebdar, 3282).

[20] Notification by Wilkinson, September 18, 1805, (Parker, Calendar, 3384).

New Orleans."[21] The governor at once took up the matter with the Marqués de Casa Calvo,[22] who immediately stated that he believed that Morales had received instructions to sell the vacant lands in West Florida, but that he hoped no sales would be made until pending negotiations between the United States and Spain should be concluded. Calvo also expressed the hope that the United States would make no disposition of the lands west of the Mississippi. Claiborne replied

> that Spain was in possession of a vast Tract of Country, which was claimed by the United States, and until the dispute was adjusted, any Sale of Lands by the King of Spain, would be considerad highly indecorous, and opposed to that Spirit of Friendly accommodation, which it was the Interest of the two nations to feel, and to manifest.[22a]

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[21] Claiborne to Madison, August 3, 1805, Parker, Calendar, 7256. Some of the Spanish officials remained in New Orleans for some time after formal possession of Louisiana had been given to the United States and continued to exercise the duties of their offices under the plea of concluding unfinished business. Their conduct was highly irritating to Governor Claiborne. See Gayarré, History of Louisiana, IV, 71-89.

[22] The Marques de Casa Calvo had been appointed special boundary commissioner to adjust the dispute with the United States over the eastern boundary of the Louisiana Purchase.

[22a] Claiborne to Madison, August 5, 1805 (Parker, Calendar, 7258).

Concerning the sales of lands west of the Mississippi, Claiborne said that he did not believe "that Lands without the acknowledged limits of the Ceded Territory, would for the present be disposed of by the United States, and therefore no possible exception could be taken." Calvo seemed unwilling to say anything further upon that point but again expressed a wish that no lands be sold in West Florida until the dispute was settled and observed that Morales, whom he represented as an unprincipled man, would alone profit by the proceeding. He had no specific information concerning Morales's instructions, and Governor Claiborne could do nothing but await developments.

Notwithstanding the fact that Casa Calvo seemed to be in accord with him regarding land sales in West Florida, Governor Claiborne was somewhat alarmed and wrote a full account of his conversation with the Spanish commissioner to Secretary Madison. In concluding his letter he said;

I must confess, that I feel much embarrassment as to the conduct proper to be pursued on my part, in the event that Morales should recommence in this City the Sales of Lands in West Florida;- It would be insulting to the Government, and might have injurious consequences. - That many Citizens would be found willing to purchase, I have no doubt, and others weak enough to draw from the proceeding a conclusion, that Louisiana, or a portion of it, would soon change Masters. I have myself supposed, that Morales could not act in this Territory, in his Official Character, with-

out violating the general Law of Nations! I am also inclined to think, that the Selling of Lands to Citizens of the United States with a view to induce them to emigrate, is an Offence at common Law, and with Law (as relates to Minor Offences) was extended to this Territory by an act of the Legislative Council.

Thus impressed, I have contemplated having recourse to the Judiciary, in the event, that Morales should act the part conjectured. The absence from the City of the District Attorney (Mr.Brown) and the Attorney General for the Territory (Mr. Gurley) leaves me on this occasion without the benefit of Counsel - But you may be assured that I will do nothing rashly, and that the Measures taken, will be the result of my best Judgment.-[23]

Casa Calvo had promised Claiborne that he would communicate the substance of Morale's instructions as soon as received. This communication had been delayed, and Claiborne's suspicions were heightened. On the following day, he wrote,

Moralis has more information, but less principle than any Spanish Officer I ever met with; his Wealth enables him to make many Friends, and among them I am sorry to inform you, some of our own Countrymen are conspicious.

The day after the report was circulated, that Moralis's conduct was approved by his Court, and that he had Authority to continue his Sales in West Florida, he (Moralis) was (I learn) waited upon my many Persons, who congratulated him on the interesting Intelligence, and evidenced a disposition to venture in the Speculation - Many of the Emigrants thither, are, indeed mere Adventurers, the acquirement of Wealth is their object and as to the means, they seem to manifest much indifference -

I must confess Sir, that the embarrassments which have attended our Negociation with Spain, have mortified me exceedingly.-

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[23] Claiborne to Madison, August 5, 1805(Parker, Calendar, 7258).

The People of West Florida, expected that the Country would certainly be delivered to the United States, and while the delay excites their regret and surprise, it tends to lessen the confidence of the Citizens of this Territory, in the American Government, and to encourage a belief that Louisiana will again fall under the Dominion of Spain! [24]

On August 8 the anxiously awaited communication from Casa Calvo was received. It appeared that a short time before the transfer of Louisiana to the United States, Governor Folch, having doubted the authority of Morales to sell lands in West Florida without his consent, had ordered the surveying stopped.[25] Morales now claimed that the new instructions were merely the removal of the prohibition imposed by Governor Folch as Commandant of West Florida and stated that the king had admonished him to complete all unfinished business, particularly that relating to the sales of public lands, expecting from his (Morales's) "Notorious Zeal" that he "would endeavor to draw from that branch, all

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[24] Claiborne to Madison, August 6, 1805 (Parker, Calendar, 7259).

[25] Ibid., August 15, 1805(ibid., 7270).Claiborne secured from a confidential source a list showing the quantity of land in this situation and the names of the persons, which he enclosed to Madison.

Possible advantages in favor of the Royal Chest." Under color of this new order he then declared his intention to remain in the province, fulfill his duties as Indendant, and give orders for concluding like business in West Florida.[26] Governor Claiborne's reply to Casa Calvo was a pointed request that Morales be removed from New Orleans. Among other things he said,

> I consider Mr.Morales's remaining here in the capacity of Intendant of East and West Florida, and discharging the duties thereof, not only as disrespectful, but a direct insult to this government,
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> Should it not be in your Excellency's power to cause my wishes (as now expressed) to be complied with, I will thank you for your answer as promptly as may be convenient, in order that I may (in that case) have recourse to such other Measures as my duty shall enjoin. [27]

This threat, however, does not seem to have been effective, for Morales did not leave the country until February 1, 1806, when he departed from Pensacola,[28] taking part of the land

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[26] Morales to Casa Calvo, transcribed to Claiborne by Casa Calvo, August 8, 1805 (Parker, Calendar, 7269 enclosure).

[27] Claiborne to Casa Calvo, August 10, 1805(Parker, Calendar, 7269, enclosure).

[28] Gayarré, History of Louisiana, IV, 131.

records with him.

The embarrassment caused by the discontented and uncertain state of the public mind, fostered by unprincipled land speculators, and the continued activities of Morales was further heightened by certain discondent elements within official circles. In general the government had tried to select able men of some experience in land matters but who were not personally interested in the question of confirming French and Spanish land titles in Louisiana. This policy, could not, however, be carried out in all cases. This in the territory of Orleans, as has been seen, Gurley, the Attorney General, had been made Register for the Eastern District, and James Brown, a prominent lawyer, of German Coast, was appointed Agent.

In the latter part of August, Brown received his letter of appointment. Since Gurley's letter relating to the time and expense necessary for making transcripts of the records had not been received, he was requested to attend to that matter.[29] Brown sent in his acceptance of the appointment

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[29] The transcripts were to show (1) the date of application, of the order of survey, of the survey, and, when the grant was complete, of the patent or concession; (2) the contents, situation, and boundaries of the tract; ~~and~~

by the earliest mail and made the following statement with regard to Gurley and the transcripts:

> Mr.Gurley set out from New Orleans about four weeks ago on a Journey to Opelousas, Attacapas and Red river, and I heard ~~in~~ hinted that he would proceed as far as Ouachita before his return. His journey is reported to have some object in view relative to the duties of his office, but as you appear not to have been apprized of it, and as his District does not embrace that Country, I presume the report is incorredt. Governor Claiborne called on me two or three days, and upon my shewing him that part of your letter which relates to copies of the records for the boards of Louisiana and of the Western District, he requested me to express to you his belief that Mr. Gurley had written to you on the subject. He has left the papers in the possessionfof a young man in New Orleans, from whom I will obtain a list of the titles in order to enable myself to contract for preparing the documents you require. [30]

Brown then visited New Orleans and procured the desired information regarding the making of the transcripts. This he enclosed in a letter to Secretary Gallatin with the following statement concerning Gurley:

> Soon after my return to the country, Mr.Gurley called at my house on his way from Natchez to New Orleans. I informed him of the steps I had taken in his absence, and in-

~~Boundaries of the tract~~; and (3) the conditions, if any attached to the grant, together with such other remarks as might appear relevant and important. See Gallatin to Brown, July 8,1805(Listed under Gallatin to Felix Grundy, in Parker, Calendar, 3368, 7247).

[30] Brown to Gallatin, August 24, 1805(Parker, Calendar, 7276).

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In the District of Lucisiana the recorder, the commissioners, and the agent had all been chosen from without the District. The boards, however, were allowed to choose their own clerks and translators, and in this district the choice was unfortunate. The clerk, Gratiot, and the translator, Leduc, were old residents and had been closely associated with Trudeau and Delassus, former lieutenant governors, in making fraudulent land grants.[33] The results of this unfortunate situation will be seen later.

(c) Work of the Boards of Commissioners.- Such were the conditions when the commissioners met on the first day of December to ascertain the rights of those claiming lands under French and Spanish titles. The law provided that they should sit until the first of March, and until they should have completed the business of their appointment. On March 6, Gurley reported for the Eastern District of Orleans. In that district about one hundred and sixty claims had been presented, and these had all been decided on by the Commissioners with the exception of a few cases which had been postponed for the reception of further evidence. He thought that the promptness with which the business of the office had been

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[33] Houck, A History of Missouri, III, 44.

conducted and the speedy decision of the commissioners on the several cases presented to them had tended in no small degree to satisfy the people and that they would generally avail themselves of the opportunity to submit their claims should Congress give an extension of time. Gurley added that Lewis, one of the commissioners, was returning to the United States and that from him much information would be derived relative to local conditions and the operations of the office.[34]

Regarding the board of commissioners in the district of Louisiana, Houch says that, "In the beginning it seemed that those favoring an indiscriminate confirmation of land claims, and claiming big land grants, greatly influenced the commissioners" and cites the appointment of Gratiot and Leduc as clerk and translator, respectively, as a case in point.[35] The agent, William C.Carr, at various times complained of the bias of the commissioners, and early in 1806 reported two specific instances of confirmation contrary to the true intent and meaning of the law. Gallatin referred the cases to the Attorney General for an opinion, laid the matter before the President, and then wrote to the commissioners as follows:

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[34] Gurley to Gallatin, March 6, 1806(Parker, Calendar, 7356).

[35] Houck, A History of Missouri, III, 43-46.

I have now the honor to enclose the above mentioned opinion, to which it is expected that you will conform; and I am directed by the President to say, that "although in cases of moderate injury, he would have left you to the dictates of your own judgment in the report of titles which you are required to make, he thinks it his duty to arrest an error, which forming the basis of your reports, and wandering entirely out of the views of the law, would probably render a new work necessary, with all the disadvantages which delay, expence and dissatisfaction would super-induce."

I will add, that the President is satisfied, that no improper motive has produced this mistake of the object of the Law in the minds of the Commissioners, and that the preceding remarks apply particularly to that construction which relates to the quantity of land, which may be allowed to actual settlers. On that question there is no difference of opinion, and we have been at a loss to discover the grounds on which the Commissioners had been led into that mistaken construction of the Statute.

In relation to the other point, it is true that cases may exist in which from collateral circumstances, permission to settle may be presumed, although the positive evidence of that permission cannot be produced. But the existence of an actual settlement cannot, consistent with the Law, be considered by itself as a conclusive evidence of such permission. If it shall appear to your satisfaction, that all or any of those actual settlers would have obtained the permission if they had applied for it, and that that omission is the only objection to the admission of their claims, the proper mode to pursue will be in your report of claims rejected as not embraced by the provisions of the Act, to make a distinct statement of such cases and of the circumstances, which on equitable grounds may be urged in their favor.-

I will upon the whole observe that a strict adherence on your part to the letter of the law, leaving to Congress such further and more liberal provisions as they may hereafter think proper,- appears the best means of preventing the dissatisfaction, which disappointed expectations would otherwise necessarily produce.[36]

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[36] Gallatin to Lucas, Donaldson, and Penrose, March 28, 1806 (Parker, Calendar, 3401).

Although Gallatin stated that the President was satisfied that no improper motive had caused the erroneous decisions in question, it is evident that he himself, as will be seen later, was convinced that a majority of the commissioners in the District of Louisiana were inclined to a relaxation of the express terms of the law in favor of those who had committed or were attempting gross frauds.[37] Indeed there are indications that he proposed to the President that the commissioners be removed and a new board appointed; but on the Attorney General's recommendation that step was not taken.[38]

4. Partial Readjustment to Local Conditions in 1806.- By the end of the year 1805 the administration had gathered much information from sources official and semi-official concerning conditions in the Louisiana Purchase. Omissions and objectionable clauses in the laws enacted for the government of that territory were apparent; and consistent with its conscientious duty towards the inhabitants, Congress set out to remedy those faults as far as possible. Only the legislation concerning the land question will be considered here. Since such a large amount of public land had been added to the domain of the United States by the new acquisition and since

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[37] Gallatin to Boyle, January 20, 1807(Parker, Calendar, 3422).

[38] Breckenridge to Jefferson, March 22, 1806(U.S.Bureau of Rolls, Bulletin, No.8, p. 68).

there must of necessity be much business brought before congress on account of the rights of the Indians and other inhabitants, the House created a new standing committee, the committee on Public Lands.[39]

(a) The Orleans Memorial and the New Madrid Petition.- During the summer of 1805, those dissatidfied with the provisions of the Act of March 2 prepared to address a formal memorial to Congress, setting forth their chief objections to the law and recommending such measures as they believed to be just. This memorial was put into definite form and presented to Congress by the House of Representatives of the Territory of Orleans. For some reason the text of the document was not at the time made public, but Gurley wrote, March 6, that from the best information he had been able to gather, he believed that the facts stated therein were correctly and fairly represented. He also suggested that Lewis, having returned to the United States, as mentioned above, would be able to give valuable information in regard to local conditions and in regard to the truth of the statements in the memorial.[40]

In a brief statement of the Spanish land policy the memo-

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[39] Annals of Congress, 9th cong., 1st sess., 285.

[40] Gurley to Gallatin, March 6, 1806 (Parker, Calendar, 7356).

rialists emphasized two points: first, Spain and France had not considered the vacant lands as a source of revenue, but had freely granted tracts to all who applied with the conditions,(1) that settlement should be made within three years,(2) that roads and levees should be built, and (3) that the grants should not be alienated until the conditions had been fulfilled; second, in no case were lands reannexed to the king's domain for failure to comply with the conditions, except where the grantee had shown some decided disposition to abandon the lands or to leave the province, and even then such lands were never considered liable to be regranted until the surveyor general, under order to investigate, reported them reannexed to the Crown. It was pointed out that these easy conditions accounted for the incomplete state of the land titles in Louisiana.

The objectionable features of the law were the requirements concerning the age or the marital condition of the original grantee and those concerning acts of habitation and cultivation. In regard to the first, it was held that the French or Spanish governments had never placed any such limitations upon the issuance of grants and that, as a result, many men now the heads of families had obtained their warrants while minors. These men were certainly entitled to the confirma-

tion of their titles. it was unjust, therefore, for the United States government to impose conditions hitherto unknown by the laws or usages of the government from which they were derived. Concerning acts of habitation and cultivation it was represented that the Spanish government allowed three years for actual settlement after the date of the warrant of survey. The language of the memorial itself is interesting.

In the forms of these concessions or warrants of survey, little variety is discoverable. They state that the roads and levees, where they are necessary, are to be made within a year: that the land is to be settled before the expiration of three years, and not to be aliened until the conditions are performed. Upon the most rigid construction of this instrument, it is clear that the holder is allowed three years to settle his land, and that the period cannot be abridged without an act of manifest injustice. In all instances where the orders of survey are not dated more than three years anterior to the first day of October, 1800, this provision of the act would operate to the great injury of the honest claimant.

Moreover, it was repeated, the Spanish government never resumed grants on account of the non-performance of conditions, unless the party claiming had evinced some disposition to abandon the land, or to emigrate from the province. It was also observed that many, after fulfilling all conditions on their first grants, had taken up others, thus permitting former acquisitions to remain unsettled and uncultivated on the first day of October, 1800. The Memorialists, therefore,

prayed that the requirements as to cultivation and habitation be dispensed with, and that the commissioners, in confirming titles, be guided by the tenor of the title papers, and the laws and usages of the government from which the claims were derived.

The recommendations of the memorialists for additional enactments were (1) that more time be allowed for the registration and confirmation of claims, (2) that some provision be made for recording and confirming those claims originating between October 1, 1800 and the date at which Spain surrendered Louisiana to France, (3) that on account of the destruction of part of the records by fire some recognition be given those who had remained long in peaceable possession, (4) that in certain localities timber cutting from the cypress swamps be allowed, and (5) that double or back concessions be granted to those holding grants on water fronts, even though they had taken no steps to secure such a grant from the Spanish government. The reasons for urging favorable action on the first three of these recommendations are obvious; but it is not clear why timber cutting on the public lands should be allowed and why double or back concessions should be given those holding grants on water fronts.

The memorial stated that in many parts of the Territory, particularly in the large and populous counties of Attakapas and of Opelousas, the people had generally settled on the bayous or rivers where the soil was extremely fertile but afforded little timber for fuel and agricultural conveniences. Behind these river lands prairies extended for several miles and terminated in cypress swamps, which furnished the only source of timber supply for the settlers. The Spanish authorities had on this account refused to grant the swamps to individuals, thus reserving them for common use. The United States, however, had imposed a severe penalty for trespassing upon the public lands; and a continuation of such a policy would compell the aforesaid settlers to abandon their habitations.

An analogous but more firmly based argument was advanced in favor of double, or back concessions. This matter had been brought to the attention of the memorialists by those who had settled on both sides of the river below the Chafalaya and the Iberville. In that locality the lands had been divided into small tracts, which had been entirely cleared on their front and had long been under cultivation. At the time of taking out these grants the grantees were at liberty to take gratuitously either a single concession of forty acres depth or a double concession, which would include all

the land between the river and the lakes or morasses, which approached it on both sides. In a few instances double concessions had been taken, but in the majority of cases the grantees contented themselves with single concessions, knowing that the back concession would be granted at any time on application. The Spanish government, therefore, out of regard for the rights of these people, had sacredly reserved these lands rather than grant them to persons who might by demanding roadways, make trouble for the proprietors on the water-front. Hence, the memorialists asked that these people be granted the privilege of securing their back concessions in accordance with the French and Spanish law and custom.

Besides the memorial from the Legislature of the Territory of Orleans, there was a petition from the inhabitants of New Madrid, in the District of Louisiana. Its principal object was to show why the temporary removal of the board of commissioners to that country was imperative. New Madrid was some distance from St.Louis, and it was impossible to produce witnesses before the board because of the expense of so long and difficult a journey. The document was accompanied by the endorsement of the board of commissioners for the District of Louisiana, who signified their willingness to sit at New Mad-

rid provided Congress gave the proper authorization and a reasonable compensation for the extra trouble.[41]

Both the Orleans Memorial and the New Madrid Petition were placed in the hands of the new committee; but before the committee formulated and introduced a bill, the whole question was referred to Attorney General Breckenridge and to Secretary Gallatin.

(b) Repeal of the Clause Requiring Surveys and Plots to be Filed.- In the meantime, Congress passed an act "extending the powers of the Surveyor General to the Territory of Louisiana" by which that part of the Act of March 2, 1805 requiring claimants in that territory to file plots was repealed so far as related to lands which had not been surveyed under the authority of the proper Spanish officer prior to December 20, 1803.

For this it followed that the title or claim to lands which remained unsurveyed on that day would not be affected by reason of the parties having omitted to file such plots with the recorder. The commissioners for either the Territory of Louisiana, or for that of Orleans, were authorized to direct such surveys as they might think necessary for

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[41] Lucas, Donaldson, and Penrose to Gallatin, January 24, 1806, in American State Papers, Public Lands, I, 233.

the purpose of deciding on claims presented for their decision. Such surveys, however, were to be made at the expense of the parties claiming the lands and were to be considered as private surveys only; that is, they were not to be regarded as official surveys. Legal French and Spanish grants, made and completed before October 1, 1800, were the only ones excepted from these provisions.[43] The new powers of the commissioners were, as just seen, discretionary; and they were to be exercised only in cases where actually necessary.[44]

(c) Gallatin's Opinions on the Memorial and on the Petition.- The observations of Attorney General Brekenridge on the Orleans memorial are not known; but Secretary Gallatin was doubtless guided by them in making his own report. Gallatin's opinions, since he had the official information available in his Department and the advantage of a conversation with Lewis, were of vital importance; and he worked up the subject with characteristic thoroughness. The substance of his report as made to Anderson, chairman of the Senate committee, on April 4, follows. In cases where no evidence of permission to settle could be produced, a quiet possession

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[43] Gallatin to Lucas, Donaldson, and Penrose, March 25, 1806, General Land Office, Letter Book "O".

[44] Laws of the United States, IV, ch. 11, pp. 6-8.

of three years should be considered sufficient proof of tacit consent. When lands had been in the quiet possession of the owner during ten years, the grants or concessions should not be invalidated because made to a minor. Concerning other grants to minors, double concessions, and concessions made subsequent to the Treaty of San Ildefonso, no action should be taken until more information could be obtained. It would be better to direct a report to be made concerning those claims and declare that, in the meantime, the lands should not be sold. It was absolutely necessary to extend the time for the filing of claims in the Territory of Orleans and to authorize the commissioners in all of the districts to hold sittings in the several counties for the purpose of collecting oral evidence. The Secretary also proposed,"both to diminish the expense, and to avoid delays," that the President be authorized to reduce the number of commissioners, for, since the decisions of the boards were not final, one man could report,on the merits of the claims as well as three. The Surveyor General had suggested that two of his deputies be authorized to keep permanent offices in the Territory of Orleans, and it was advised that sales of public lands be confined tothe Western District, where a portion had been ordered

surveyed. There was in the Eastern District little vacant land, and no report had yet been received from the commissioners.[45]

d. Provisions of the Supplementary Act of April 21, 1806.—

In general Congress followed the suggestions of Secretary Gallatin and passed an act, approved April 21, 1806, supplementary to the Act of March 2, 1805, "for ascertaining and adjusting the titles and claims of land, within the Territory of Orleans, and the district of Louisiana." For every person who had commenced actual settlement prior to October 1, 1800, three years habitation and cultivation from the time when such settlement began, and prior to December 20, 1803, was declared to be sufficient proof that such settlement had been made by the permission of the proper Spanish officer;and every claim for a tract of land, not exceeding 640 acres in extent, was to be confirmed, even though the original grant had been made a minor, where the tract had been quietly possessed and actually inhabited and cultivated by the claimant for ten years prior to December 20, 1803.

In the Territory of Orleans time for registration was extended to January 1, 1807; and neglect to file within this time would forever bar the rights of the claimant in the same manner as prescribed by the Act of 1805. The registers

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[45] American State Papers, Public Lands, I, 232-234.

[illegible]

[illegible] American State Papers, Public Lands, I, 352-53.

were authorized to appoint deputies for each country; and the commissioners, to take action on the claims embraced by the present act. In addition, the latter officials were directed to investigate and report on the nature and extent (1) of the claims to double, or back concessions, (2) of claims made to minors not embraced by the present act, and (3) of claims derived from the Spanish government subsequent to April 1, 1800 for lands actually settled and inhabited on December 20, 1803. After January 1, 1807 the number of commissioners on one or both boards could be reduced to one or more persons at the discretaion of the President. In order to facilitate the taking of oral evidence either in support of, or in opposition to claims, the commissioners for the Territory of Orleans and the District of Louisiana were authorized to remove their sittings, or to send for that purpose one or more members of the board to such places within their respective districts as they might think necessary.

To secure uniformity, the boards of commissioners were required to make all reports and transcripts for the Secretary of the Treasury on forms to be prepared by him. Furthermore, the experience with the board in the District of Louisiana having shown the necessity of taking the interpretation of the law out of their hands, it was enacted that each of

the boards should, in their several proceedings and decisions, and decisions, conform to instructions from the Secretary of the Treasury, approved by the President.

The Surveyor General was directed to appoint a principal deputy of each district in the Territory of Orleans to keep an office, to execute, file, and record surveys, and to form, as far as practicable, connected drafts of the lands granted so as to exhibit the vacant land.

The President was authorized to appoint a receiver of public moneys for the Western District of the Territory of Orleans and to offer, whenever he thought proper, all surveyed public lands in that district, with certain exceptions, for sale.[46]

c. Instructions to the Boards of Commissioners.- The task of formulating instructions for the commissioners was not an easy one. It was not a matter of simplifying the language of the law, but one of finding out what the commissioners would likely do if not instructed, and of putting the pro-hibition where it belonged and in unmistakable language. Therefore, Secretary Gallatin, on May 7, requested Wm. C. Carr, Agent for the District of Louisiana, "to state from time to time, whether any principle be adopted by them

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[46] Laws of the United States, IV, ch. 39, pp.50-55.

[the commissioners] which, from its nature and consequences, seems to call for any such instruction."[47] The Secretary also enclosed to Carr a copy of a letter of the same date to the board, in which he particularly stated to them that they must adhere to the letter of the law, and not confirm any claims not strictly embraced by its provisions.[48] Carr seems not to have neglected this phase of his duty, for on August 15 Gallatin wrote to the President:

> I enclose a letter from Mr.Carr, the land agent of the United States in upper Louisiana, in which he continues to complain of the bias of the commissioners in favor of claims which he considers as unfounded or suspicious. After making proper allowance for the party spirit in that territory, it still appears to me that the interest of the United States will be materially injured by the conduct of the commissioners, . ..

The Secretary enclosed with the above letter a rough sketch of the instructions to be sent to the commissioners.[49] President Jefferson did not essentially change Gallatin's draft and on returning it said, "it is without confidence I give any opinion on this subject, having always considered your

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[47] Gallatin to Carr, May 7, 1806, in American State Papers, Public Lands, III, 356.

[48] Gallatin to Lucas, Penrose and Donaldson, May 7,1806 in American State Papers, Public Lands, III, 356.

[49] Gallatin to Jefferson, August 15, 1806, in Houck, A History of Missouri, III, 46.

knowledge of it so exact as to supersede the necessity of my studying it minutely."[50] Such an opinion expressed by one who was himself as authority on Louisiana affairs was, indeed, complimentary to Secretary Gallatin.

As finally revised and sent to the commissioners September 8, the instructions may be summarized as follows:[51]

1. All claims bearing date subsequent to October 1, 1800 must be rejected, unless for donations.

2. All titles not fully completed and duly recorded prior to October 1, 1800 shall be classed as incomplete.

3. Claims presented for donation or confirmation of incomplete title shall not be admitted, unless the lands claimed were "actually inhabited and cultivated" prior to the specified dates.

4. All claims for confirmation of title must be derived from a written order for survey issued by the proper officer.

5. Large claims must be rejected, unless there is proof of a special authorization.

6. All title papers shall have been duly registered.

7. Entries out of order shall be considered "prima facie" as fraudulent; and the burder of proof of date and validity shall fall on the claimant.

8. Papers not entered may be challenged by the agent; and the burden of proof of date shall fall on the claimant.

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[50] Jefferson to Gallatin, Monticello, August 31, 1806, in Adams, The Writings of Albert Gallatin, I, 308.

[51] Gallatin to Lucas, Penrose and Donaldson, September 8, 1806, in American State Papers, Public Lands, III, 356-357.

9. Whenever evidence shows antedating, the claims shall be rejected as fraudulent; and every official connected therewith and ever witness shall answer every question put by the agent respecting any claim the validity of which is disputed by him.

10. Donations shall not be made to those holding complete titles or seeking confirmation of incomplete titles.

11. Former decisions must be revised and corrected in conformity with the Attorney General's opinion, of March 12, 1806, and in conformity with the letter, of March 26, 1806, from the Secretary of the Treasury, both of which documents are to be considered a part of these instructions.

The instructions were followed, on November 14, 1806, by the rules prescribed in relation to the forms of the transcripts of decisions. They were given in minute detail and were "intended to compel, as far as practicable, a compliance with the provisions of the laws, and with the instructions heretofore transmitted."[52] Copies were forwarded to Agent Wm. C. Carr, of the District of Louisiana; and Secretary Gallatin writing to him said:

I rely on the continuance of your faithful endeavors in promoting that object (see above), and bringing to view every attempt of an improper nature. I beg leave also to call your particular attention to the appearance of the records of surveys lately delivered to Mr. Bent.

Secretary Gallatin's measures brought forth results. The commissioners for the District of Louisiana were forced

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[52] Gallatin to Carr, November 17, 1806, in American State Papers, Public Lands, III, 358.

to confess that the instructions would necessitate the revision of a great part of their decisions. Inasmuch as a bill was then before Congress, which would probably make considerable alterations in the existing laws, the board suggested that their operations be suspended until after its passage. This suggestion was approved by Gallatin, though he instructed them to continue to receive evidence.[53]

Before taking further legislation into consideration, it will be well to note in what respects the Act of April 21, 1806 failed to meet the wishes of the inhabitants of the Louisiana Purchase as expressed in their memorial of 1805. The limitations regarding grants to minors were partially, but not wholly, removed, the requirements of cultivation and habitation were only slightly relaxed; and the request that timber cutting from the cypress swamps be allowed was ignored. Concerning other grants to minors, double concessions, and concessions made subsequent to April 1, 1800 no provision was made for confirmation, but the commissioners were ordered to report on their nature and extent. Thus Congress implied that such provision would be made as soon as sufficient information on which to base action could be obtained.

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[53] Gallatin to the commissioners on land claims for Louisiana, February 13, 1807, in ibid.

5. Definite Formulation of a Policy for Louisiana; Act of March 3, 1807.— It was inevitable that some legislation should be enacted regarding confirmations during the next session of Congress. It is significant that the Legislature of the Territory of Orleans elected Daniel Clark to serve as delegate. Clark was owner of the Maison Rouge grant, one of the three largest in the Territory, and was according to Claiborne, an active enemy of the administration. The second session of the ninth Congress met on December 1, 1806, and Clark, on the 9th secured the passage of a resolution directing the Committee on the Public Lands to inquire whether any, and, if any, what alterations were necessary in the act for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and District of Louisiana, and to report thereon by bill or otherwise.[54]

The Committee on the Public Lands at this time consisted of John Boyle, of Kentucky, chairman, Jeremiah Morrow, of Ohio, Ezra Dabney, of New Jersey, Burwell Bassett, of Virginia, John Russell, of New York, George W.Campbell, of Tennessee, and Seth Hastings of New York. The committee of seven members consisted, therefore of three men, including the chair-

[54] Annals of Congress, 9th cong., 2d sess., 130.

man, whose homes were west of the Alleghanies, and four others, one of whom was from Virginia.[55] Some of these men, especially Morrow and Campbell afterwards became very influential in subsequent land legislation in Congress. After some consideration of the subject proposed in Clark's resolution, the committee agreed that the Commissioners should confirm claims to land in the territories of Orleans and Louisiana, in cases where the same would have been confirmed according to the laws, usages, and customs of the Spanish government. This was indeed a liberal attitude; and the chairman addressed a letter to Gallatin requesting his opinion respecting the limitations which it might be proper to put on the authority thus intended to be given to the commissioners. Gallatin replied,

> Where usage and customs may be contrary to the written laws or ordinances, it is extremely difficult to lay down any fixed rules on the subject. So far as I have been able to obtain information, it appears to me that what is called usages and customs of the Spanish government, consists principally of deviations by the local officers, from the ordinances which we might have supposed them bound to obey. Those exceptions often the result of favortism, are now plead as tantamount to the ordinances themselves. Whether the Commissioners may on the spot ascertain whether any such exceptions had in fact acquired by general usage, the force of law, I cannot say: but in the mean while the only limitations which occur relate to

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55. Annals of Congress, 9th cong., 2d sess., 109-111.

the magnitude of the claims, and to the revision of the proceedings of the boards by Congress. [55a]

The Secretary admitted that a strict constructionoof the past acts of Congress would operate injuriously in numerous cases. But it had seemed that the object of the national legislature had been to confirm only such claims as were evidently founded on justice, and to await reports from the commissioners before admitting others. "Under that impression, knowing also that gross frauds had been committed or attempted in upper Louisiana, and perceiving that a majority of the Commissioners there inclined to a relaxation of the express terms of the law," Gallatin had thought it his duty to give them, in conformity with the Act of the last session, instructions binding them to a strict construction of the law. "For it appeared important that greater indulgence should hereafter be given Congress by the admission of claims rejected by the Commiss. rather than to render it necessary for that body to reject improper claims admitted by the board." He was convinced, however, that the acts were susceptible of beneficial modifications, and therefore made the following recommendations:

1. That the classes of claims to be confirmed be enlarged,(1) by repealing so much of the acts as declared that grants to minors should be considered null, (2) by providing

[55a] Gallatin to Boyle, January 20, 1807 (Parker, Calendar, 3422).

that in cases where the term fixed for the fulfillment of conditions had not expired when possession of Louisiana was obtained, grants should not be forfeited because of such non-fulfillment, (3) by recognizing without any restrictions, all claims not exceeding 2,000 arpens where there had been undisputed possession for a prescribed number of years, and (4) by declaring that all claims not exceeding eight hundred arpens ("equal to 675 acres")[56] should be confirmed in all cases where they would have been confirmed according to the laws, usages, and customs of the Spanish government.

2. That the jurisdiction of the commissioners be enlarged by authorizing them to make final decisions in all cases not involving more than eight hundred arpens, subject however to the approbation of the Attorney General when the vote was not unanimous.

3. That the commissioners be directed to make a separate report on all cases involving more than eight hundred arpens which in their opinion ought to be confirmed according to the laws, usages, and customs of the Spanish government,

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[56] Treat (The National Land System, 216) gives the equivalent of an arpen, or arpent, as four-fifths of an acre. According to that ratio eight hundred arpens would be equivalent to only 640 acres. Gallatin's estimate was, of course, official and must be accepted as such in this study.

though not embraced by the acts of congress, reserving to Congress the power of finally deciding on such cases.[57]

The above recommendations were only in part adopted by the House. When the bill reached the Senate, it contained a section repealing so much of the former act as declared that no incomplete titles should be confirmed unless the original grantee was at date of the grant either the head of a family or above the age of twanty-one, and another providing that persons who had been in possession of a tract not exceeding 2,000 acres(!) in extent for ten consecutive years prior to December 20, 1803 should be confirmed in their titles. In spite of Gallatin's opinions the Committee on the Public Lands had persisted in inserting a provision giving the commissioners full power to decide "according to the laws and established usages and customs of the French and Spanish Governments," on all claims for tracts not exceeding one square league in extent and the decisions, when in favor of the claimants, were to be final. Nothing was done concerning cases where at the date of the transfer, the time allowed by the Spanish government for the fulfillment of the conditions had not expired.

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[57] Gallatin to Boyle, January 20, 1807(Parker, Calendar, 3422).

In the Senate, the House bill was referred to a special committee consisting of Thomas Worthington, of Ohio, William B. Giles, of Virginia, and Samuel L. Mitchell, of new York.[58] Worthington at once requested Secretary Gallatin to communicate his views in regard to it. Gallatin's opinion on the section enlarging the jurisdiction and power of the committioners is given in full because of the light thrown upon the attitude of Congress toward the question of confirmations.

The 4th Section is the most important of the bill, and establishes the principle that the decisions of the Commissioners shall be final for claims not exceeding one league square; which will embrace the great mass of claims in the country. I would have preferred some check in cases at least where the board might not be unanimous, and had accordingly written to the Committee of the House; but the House having admitted the principle without limitation, I have nothing new to add on that point. There is however, a point on which an amendment appears to me essential.

The object of the Section is only to give final jurisdiction to the Commissioners, and not to fix the rules by which they shall decide. But the words in the 4th 5th and 6th lines "according to the laws and established usages and customs of the French and Spanish Governments," establish a rule of decision contradictory to all the former principles established by the acts of Congress on that subject, and to the first sections of the Act itself. For if it be intended that the Commissioners shall be governed, not by the laws of Congress establishing certain descriptions of claims, (and amongst others those embraced by the 2d Section of this Act) but by the laws, usages, and customs of the Spanish Government, those few words are in fact a repeal of all the former laws of Congress. If such be the intention, there is no need of the two first Sections of this Act; and the new provision should appear in a distinct section, expressly stating that those laws, usages, and customs shall be the rule of decision any

act of Congress to the contrary notwithstanding; that is to say that all claims which in the opinion of the Board might have been completed had the Spanish Government continued shall be confirmed. If that be the object, there is very little use for the trouble and expense of a board, and Congress may as well say so at once, and declare that the parties producing any enchoate, concession, order of survey, requete, permission or application to settle, shall receive patents, although they have not settled the land. For it must be observed that the laws of Congress already embrace almost every case of settlement, and that the claims intended to be covered by this sideway provision are, commandants, permissions or orders of survey not settled. [59] And that is also intended to cover cases where there was a condition to settle: for it is urged that the established usage was not to enforce the condition. The fact is that that Government had no fixed principle but favortism. Land was often taken away if not settled and given to greater favorites; and very often the condition was not enforced. I have proofs of both in the Treasury; and I have also proofs of cases where commandants had granted thousands of acres, though restricted by written ordinances to eight hundred; and yet the grantee being a favorite, the grant [was] confirmed by the very Governor or Intendant General who had issued the ordinance: so that the deviations from the laws is what is intended by the usages and customs. I am therefore, decidedly of opinion that those words from according in 4th to governments in 6th line line (both inclusive) should be struck out.

Another amendment, though of less importance, would I think be useful in the same Section. The last provision makes expressly the decision final only against the United States. That may be the effect of the section itself; for it is probable that a court would not consider a claim forfeited because it had been rejected by the Commissioners.- But there is no necessity to proclaim the thing; and it would be more conformable with the course pursued in similar cases to add at the end of a section "and when against

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59 The use of a comma after the word commandants was evidently a copyist's mistake, for the reading evidently should be "commandants' permissions or orders of survey not settled."

the claimant shall be submitted to Congress for the final determination in the manner heretofore provided by law" or words to that effect.

Secretary Gallatin also proposed a new section granted pre-emption rights to those claiming back concessions as a conciliatory measure and suggested further amendments of minor importance.[60]

Congress was now about to adjourn, and the Senate could give the matter only a hurried consideration. The report of the special committee was not agreed to,[61] and the bill passed with but slight change in the most important sections. It was now evident that the western representatives were beginning to show power and that in the future Congressional policy concerning the confirmation of French and Spanish land titles would be influenced by the wishes of their constituents and the appeal of special interests rather than by the recommendations of an administration cabinet officer.

The provisions of the bill as finally approved were essentially as follows: So much of the first section of the Act of March 2, 1805 as provided that no incomplete titles

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[60] Gallatin to Worthington, February 25,1807(Parker,Calendar, 3431).

[61] Annals of Congress, 9th cong., 2d sess., 96.

should be confirmed unless the person in whose name the warrant or order of survey had been granted was at the time of its date either the head of a family or above the age of twenty-one was repealed. Claims by persons resident in the Territory of Orleans or Louisiana on December 20, 1803, who had for ten consecutive years prior to that date been in possession of a tract of land not claimed by any other person and not exceeding 2,000 acres were to be confirmed, except in cases of lead mines or salt springs. The time allowed for registering claims was extended to July 1, 1808, with the same penalty for neglect to register within the alloted time as had been made in previous acts.

The commissioners were given full powers to decide on all claims made by those who were inhabitants of the Territories of Orleans and Louisiana on December 20, 1803 for tracts not exceeding a league square and not including a salt spring or a lead mine. This decision, when in favor of the claimant, was to be final against the United States, any act of Congress to the contrary notwithstanding. The commissioners were directed to furnish transcripts of the final decisions in favor of the claimants to the Secretary of the Treasury and to the Surveyor General, and to deliver to every party whose claim was confirmed a certificate

stating the circumstances in the case and that he was entitled to a patent for the tract of land therein designated. The party holding such a certificate was given twelve months from its date to file it with the recorder or register of the land office. If a plot of survey had been previously filed, the register or recorder would then issue a certificate, which on being transmitted to the Secretary of the Treasury, would entitle the party to a regular United States land patent. In all cases where an authenticated plot of survey had not been filed with the proper register or recorder or did not appear of record on any of the public records, surveys were to be executed under the direction of the surveyor general at the expense of the parties; and the commissioners, when ever they might think necessary, could direct tracts to be resurveyed at the expense of the United States.

The commissioners were, furthermore, ordered to report on all claims not finally confirmed; and the classification in the said report was to be as follows: first, claims which ought to be confirmed in conformity with the acts of Congress second, claims which, though not embraced by the provisions of the said acts, ought to be confirmed in conformity with Spanish law, usage, and custom; and third, claims not em-

braced by the provisions of the said acts and which ought not to be confirmed in conformity with Spanish law, usage, and custom.[62]

During the same session of Congress another law was passed to prevent settlements being made on lands ceded to the United States, until authorized. It will be recalled that in 1804 Congress had forbidden settlement on lands belonging to the United States, or any attempt to survey or otherwise mark boundaries about the same, on pain of a fine of one thousand dollars and imprisonment. This provision had been found unsatisfactory; and Congress made the matter a subject for specific legislation. The prohibition stood as before, but the penalty was changed to mere forfeiture of all claim to the property in question; and the President was authorized to employ military force to remove from the lands of the United States persons attempting to disregard the prohibition. There was a proviso attached, however, to the effect that nothing in the section should be constructed

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[62] Laws of the United States, IV, ch. 91, pp. 111-114. The provision for surveying unsurveyed grants in the State of Louisiana was made more specific by an act approved April 18, 1814; the intent of the law remained the same. See ibid., ch. 681, pp. 710 - 711.

to effect the right, title, or claim of any person to lands in the Territories of Orleans or Louisiana before the boards of commissioners and Congress had taken action thereon.[63] While titles were in no way affected by the provisions of the act, claimants could not have their surveys made until they had received certificates from the boards of commissioners.

The legislation of 1807 marks the crystallization of a confirmation policy for the territory of the Louisiana Purchase. The system of boards of commissioners was definitely established; the work of the commissioners was carefully planned in Gallatin's instructions; and Congress was ready to await the submission of their reports for final decision.

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[63] Ann. of Cong., 9th cong., 2d sess., 1288-1290.

IV. The Work of the Boards of Commissioners and the Confirmation of Approved Claims.

1. Gallatin's Instructions to the St. Louis Board.

As shown in the preceding chapter, Congress by the Act of March 3, 1807 "respecting claims to land in the Territories of Orleans and Louisiana" adopted, contrary to the expert advice of a government official of high rank, principles of a very liberal character. In spite of the fact that one of the boards of commissioners had shown a decided disposition to disregard legal restrictions on confirmations in a district where many of the claims were known to be fraudulent, Congress authorized the boards to decide on all claims involving not more than one league square "according to the laws and established usages and customs of the French and Spanish Governments;" and the decisions when in favor of the claimants were to be final. But Gallatin did not on this account become less watchful over the proceedings of the St.Louis board nor formulate with less care his instructions to them. In his instructions he wrote,

The rule established by the 4th section of the act, and by which the commissioners must decide on the several descriptions of claims submitted to them, that is to say, the Spanish laws and established usages and customs may in some in-

stances be at variance with the Regulations prescribed by the instructions transmitted in my letter of the 8th Septr. last, and whenever such variance does in the opinion of the Board exist, the instructions must be considered as so far superceded by the law.- It is however necessary to observe, 1st That all the former opinions of the Board must necessarily be revised, the Commissioners having full power to annul, modify or confirm the same, as on examination shall to them appear proper; 2ndly That the opinion of the Attorney General transmitted in letter of the 26th March 1806 is not as it relates to the quantity of land allowed under an act of Congress affected by the rule established by the 4th section of the last Law, and must therefore be considered as still in force: for which reason no patents will issue on Certificates granted by the Commissioners for that species of claim, for a greater quantity of Land, than the Maximum stated, in the said opinion: 3rdly That the instructions must be considered as still in force, as relates to all the claims on which the Commissioners are not authorized to make a final decision. But if they shall think any part of the said instructions productive of embarrassment or injustice, and they will suggest any modification or alteration, their representation on that subject will meet with attention, and be submitted to the President.

The object of the Government has uniformally been a consumation of equitable claims, and a rejection of all frivolous or fraudulent pretensions. Circumstances well known to the Board and on which it would be unpleasant to dwell, rendered it necessary for the Executive to counteract a dangerous laxity, by the most regid construction of the law. It is confidently expected that the liberality of the principles adopted by the last act, and the great discretion vested thereby in the Commissioners, intended as they are for the purpose of satisfying and quieting the titles of a great majority of the Inhabitants of the Territory, will not on the other hand be abused, so as to give countenance to fraud and rapacious speculation. 1

The commissioners were also given detailed regulations concerning the certificates to be issued; and the Secretary

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1 Gallatin to Bates, April 2,1807(Parker,Calendar,3434).

ordered,

As soon as they shall have commenced to issue Certificates, it will be necessary as a further check on any fraud, that a monthly list of the certificates issued during the proceeding [sic] months, should be transmitted to this office, and another delivered to the Board. [2]

2. The Board in Operation.- The scarcity of original documents now in the hands of the writer prevents a detailed study of the actual workings of the different boards of commissioners. There is little doubt, however, that the commissioners had all the exciting experiences of a frontier judicial tribunal. The question dealt with was of vital economic importance to nearly every individual in the country, especially to the Anglo-Americans who had moved into the new territories to secure "free land." Those whose claims were rejected were, of course, dissatisfied, and some of the members of the boards became very unpopular. Houck quotes the following entry from the minutes of the board in the District of Louisiana:

> While the board was in the discharge of its duty this morning, Rufus Easton, late judge of the territory, entered the room where the commissioners were seated upon the bench, and immediately in sight and full view of all the commissioners, came up to James L.Donaldson, Esq., with a bludgeon and calling him many approbrious epithets struck him with great violence over the arm and head several times, nor desisted

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[2] Gallatin to Bates, April 2, 1807(Parker, Calendar, 3434).

until Mr. Donaldson descended from the bench and got possession of a sword cane of which he drew the sword. The board taking into most serious consideration this outrage of the laws and insult to their authority, apprehensive of the alarming consequences which may flow from so dreadful a precedent, satisfied that they have the inherent right to protect their persons from outrage while in the discharge of their duty, by process of commitment do adjudge and order that a warrant shall be issued against the said Rufus Easton directed to the sheriff of St.Louis. [3]

Commenting upon this incident, Houck says,

It is circumstances such as these that indicate the distracted condition, the feuds, contentions, lawlessness, and greed for land, that then prevailed in the territory. Such events convulsed society, destroyed the confidence of the old inhabitants of the country and caused them to regret the change of government. Many of the leading Americans were always armed with either dirks or pistols, and the notorious John Smith T. is a fair sample of the adventurers, land speculators and bullies that for a time made it customary for the judges on the bench to have pistols and ataghans by their side. The conduct of Easton in assailing Donaldson while in the performance of his judicial functions, plainly indicated the necessity of being prepared for any emergency by judicial officers. Donaldson shortly after this incident resigned. [4]

Donaldson was succeeded by Frederick Bates, a former judge of Michigan Territory. In July, 1807, the services of Gratiot, as clerk "were dispensed with;" and in the course of several years other changes, which cannot be discussed here, were made in the personnel of the board.[5]

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[3] Houck, A History of Missouri, III, 48.

[4] Ibid. 49.

[5] Ibid., 49-54.

The two boards in the Territory of Orleans seem not to have had much trouble with the people of their districts, for few complaints appear to have reached the General Land Office from that quarter. Gurley occasionally reported that the people were content with the decisions of the commissioners and the course followed by the government.[6] This peaceful state of affairs may be explained, in part, by the fact that attempts to secure fraudulent grants had not been very numerous. But there is also evidence that the board at Opelousas, in the Western District, had, as Gallatin feared would be done, taken a liberal interpretation of the fourth section of the Act of March 3, 1807, by which they were given "full powers to decide according to the laws and established usages and customs of the French and Spanish Governments, upon all claims within their respective districts" for tracts not exceeding a league square. What the Opelousas board did was to adopt a set of "general principles of decision" setting aside the essential requirement of actual settlement on October 1, 1800 or December 20, 1803. "For," to use Gallatin's words, "they have not only admitted in addition to the Order

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[6] For example, see Gurley to Gallatin, November 3, 1807 (Parker, Calendar, 7473).

of survey a new species of title, viz. the requête or petition of the party signed by the Commandant which is nothing else than the permission to settle contemplated by the act: but they have in the face of the law declared that no fulfillment of conditions was necessary and expressly that no proof of settlement would in either case be required."[7]

Notwithstanding the opinions expressed in his protest against the fourth section of the bill before it became a law, Gallatin now held that the enlargement of the powers of the commissioners" "was not intended to recognize new species of claims or to repeal the essential principles enacted by preceding acts."

For the 1st section actually repeals one of those principles, viz. the rejection of orders of survey in favor of minors; and the 8th section provides that the Commissioners shall in their report of claims not confirmed by themselves make two classes of such as ought in their opinion to be confirmed viz. 1 "such as ought to be confirmed in conformity with the acts of Congress;" by which are meant those of more than one league square. 2d, "such as though not embraced by the acts of Congress ought to be confirmed in conformity with the laws and usages of the Spanish government;" which class could include no claims whatever, if according to the construction assumed by the Opelousas Commissioners, they had the power to confirm claims not embraced by the Acts of Congress when in their opinion they were in conformity with the laws and usages of the Spanish government.

The provision making the decision of the Commissioners final

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[7] Gallatin to Madison, May 17, 1811 (Parker, Calendar, 3471).

had, however, superceded the former requirement that they must conform to instructions from the Secretary of the Treasury; and he could do nothing more than express his opinion of the impropriety of the "general principles of decision," and call the attention of the Opelousas commissioners to the rules adopted by the New Orleans board.[8]

The publication of the rules of the Opelousas board naturally produced much dissatisfaction in the Eastern District and in the District of Louisiana, particularly in the latter where the increased clamors against the commissioners placed them in a very disagreeable situation.

The use which is made of this publication by disappointed land claimants and by those intruders whose object is to unite all classes against the operations of the land laws may be easily understood. And I have been informed by Governor Claiborne that even in the Opelousas District, there is great danger of numerous frauds being committed particularly in relation to requêtes which may have been fabricated at pleasure and on which there was no other check but the obligation of an actual settlement. [9]

Under those circumsatnces there was a question as to what should be done. Gallatin suggested two courses; namely, that the President remove the commissioners, thus ef-

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[8] Gallatin to Madison, May 17, 1811(Parker, Calendar, 3471).

[9] Ibid.

fectually curing the evil, or that he write an official letter expressing his disapproval, which would perhaps produce the desired effect.[10] Since the documents are not at hand, it is impossible to say, at this writing, what course was adopted.

3. The Reports of the Boards and the Consequent Modification of the Confirmation Law.- The first board to report the results of its deliberations was that of the Eastern District of Orleans. Its report was communicated to Congress on January 9, 1812.[11] Most of the claims in that district had been confirmed, and those which had been rejected were considered by the board as belonging to the third class: that is to say, as claims not entitled to confirmation, either under the acts of Congress, or in conformity with the laws, usages, and customs of the Spanish government. An examination of the report on rejected claims shows that most of them were "for a second depth of forty arpents," frequently called double concessions. A few had originated in unauthorized purhhases from the Indians. These people had not been allowed to sell their lands without the concurrence of the government, which made a formal

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[10] Gallatin to Madison, May 17,1811(Parker,Calendar,3471).

[11] For the full report, see American State Papers, Public Lands, II, 224-267.

grant to the purchaser. In all cases, therefore, where the Spanish grant or warrant of survey could not be produced, such claims had been rejected.

Claims for the second depths, or double concessions, fell into three general classes. Many of them were based solely upon petitions and certificates from the commandants to the effect that the lands were vacant and might be granted without prejudice. The commissioners had ruled that, although a grant would probably have been made had the papers been presented to the proper official, no grant had been made, and that such claims should not be confirmed. In other cases back concessions were claimed merely upon occupation of the front. The Spanish government had invariably refused to grant the second depth to any person other than the front proprietor, yet nothing short of a grant or warrant of survey could confer a title or a right to the land; therefore, the commissioners could not recommend the confirmation of such claims. A third class of claims to back concessions, and of these there was a considerable number, consisted of those ~~were~~ made on the basis of actual grants, the titles to which had been lost or destroyed by fire in New Orleans. Unfortunately, there was no manner of evidence whatever exhibited to prove that such title papers had ever been obtained from the Span-

ish government, and the commissioners were compelled to reject the claims as unworthy of confirmation.

The situation in the Eastern District of Orleans was unique. It was the oldest settled part of the province, and few of the inhabitants were Anglo-Americans. Many of the grants went back to the time of O'Reilly; and, although the commissioners could not recommend the confirmation of claims to back concessions to which there was not even the semblance of a title, it was evident that the people were entitled to generous treatment. Gallatin had been convinced of this as early as February, 1807, for in his letter to Worthington, in the Senate, on the twenty-fifth of that month he had said, relative to the bill "respecting claims to land in the Territories of Orleans and Louisiana,"

[. . . I would suggest another provision which might come in as a new Section between the 3d and 4th. A number of the Planters on the Mississippi have neglected to apply for what is called double or back concessions, that is to say their grants extend only forty arpens (equal to about 460 perches) back so as to include all the tillable land, but not the swamp which supplies them with timber. A grant of a double, or rather additional concession extending forty arpens farther back was never refused when applied for: and those who had neglected to make such application fear that the U.States may sell the Land to speculators who will purchase only in order to sell again to the owners of the front part, as that back swamp is unfit for cultivation, and valuable only as it supplies timber. Without deciding at present whether that additional concession should be given or sold, or pretending to fix it's value, it would quiet the uneasi-

ness of the people merely to secure them generally a right of pre-emption to such additional concessions, confining the right to owners of land heretofore granted on the banks of the Mississippi in the Territory of Orleans, the depth to forty acres, and the breath to that of the front of the plantations; provided however that where, on account of the bends of the river the whole breath could not be preserved to each owner the back land should be equitably divided among them. 12

For reasons recited above, Congress failed to take action on Gallatin's suggestion: and, after the passage of the bill, the prevailing sense of its finality, prevented further changes being made until the commissioners were nearly ready to submit their final reports. On March 3, 1811 an act was approved granting preemption privileges to those holding French and Spanish grants on river fronts after the manner suggested by Gallatin.[13]

The second report to be submitted to Congress was that of the board of commissioners for the District of Louisiana. It was very voluminous, for in that district over half of the claims submitted had been rejected. This state of affairs was no cause for surprise, but it indicated that there would be a period of prolonged agitatinn in Congress and litigation

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[12] Gallatin to Worthington, February 25, 1807(Parker, Calendar, 3431).

[13] Laws of the United States, IV, ch. 323 pp. 356-361.

in the courts, if the problem were not dealt with wisely and effectively. Both Penrose and Riddick, commissioners, were ~~present~~ in Washington during the time Congress had the report under consideration and were called upon by Gallatin and Morrow, chairman of the House Committee on the Public Lands, for information and recommendations concerning the report. They recommended that the following general classes of claims be confirmed:[14]

1. Claims derived from French or Spanish orders of survey or cessions, dated prior to October 1, 1800, not exceeding one league square, and which had been either inhabited or cultivated prior to December 20, 1803, or had been granted for the purpose of building mills or other works of public utility, where the terms expressed in the grant had been compiled with.

2. Claims that had been either inhabited or cultivated prior to, or on December 20, 1803, with or without permission

3. Claims for towns or villages, their common fields or field lots, and their commons, either recorded or not recorded.

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[14] American State Papers, Public Lands, II, 377-379.

With respect to the first of these general classes, it was recommended that the limit of extent should remain one league square, because Spanish documents, such as official letters, showed that the Spanish government never intended to make gratuities of large extent. It was held that if the claimant had the means of using more than that quantity of land he must be righ and therefore able to purchase lands. The commissioners believed that the requirement of proof of permission to settle was unnecessary, because settlement without the express permission of the proper Spanish officer had been almost impossible.

In fact the known vigilance of that Government was such as to prevent an idea of that kind being entertained for a moment. Even the subjects of Spain, old residents of the country, were not permitted to travel from one village to another, a distance of not more than twenty miles, without obtaining from the commandant a passport, in which was specially stated the road to be traveled, going and returning.

Claims to town lots, out lots, common fields, etc., by the towns and villages and their inhabitants should be confirmed, whether recorded or not, because there could be no question concerning their habitation and cultivation during the time prescribed by the law. If this could be done it would not be necessary to open the land office for the purpose of having such claims recorded. If the office were

opened it was feared that a great many fraudulent claims would be entered, since both of the last lieutenant governors were still accessible to the inhabitants.[15]

Congress therefore passed "An Act making further provision for settling the claims to land in the Territory of Missouri," which was signed on June 13, 1812. By its provisions the claims to town and village lots and similar property, inhabited, cultivated, or possessed prior to December 20, 1803, were confirmed. Also, claims to donations of land which had not been confirmed merely because permission, by the proper Spanish officer, to settle had not been proven, or because actual habitation, or cultivation, or both these requirements could not be proven, were confirmed in case the claims were inhabited prior to December 30, 1803 and cultivated in eight months thereafter. Claims not confirmed because for over eight hundred arpens were confirmed to the extent of that amount.[16] By a supplementary provision in an act signed March 3, 1813, those whose claims to donations had been approved were allowed 640 acres notwithstanding a

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[15] American State Papers, Public Lands, II, 377-379.

[16] Laws of the United States, IV, ch.422, pp. 444-447.

less quantity had been approved by the commissioners; but in no case was the grant to be for more land than was claimed.[17]

On June 22, 1813, a report from the commissioners for the Western District of the State of Louisiana[18] was communicated to the Senate. This report showed that 2278 certificates had been issued for confirmed claims, and that only 483 claims had been rejected. Of the latter eighty-eight were placed in the second class as worthy of confirmation, leaving 395 definitely rejected. Thus it is seen that over four-fifths of the total number of claims presented in the district were confirmed. The unfavorable opinions given on the 395 claims definitely rejected were generally founded on lack of sufficient testimony and lack of documents in proof of the points required by law, and in some cases on the non-production of any proof whatever. The commissioners were not authorized to decide on claims involving more than one league square, but they included them in their report "stating reasons for their recommendation or rejection of each."

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[17] Laws of the United States, IV, ch. 509, pp.515-517.

[18] The Territory of Orleans was admitted as the State of Louisiana on April 30, 1812.

Two of these, the Maison Rouge and the Bastrop grants, have been mentioned. The former embraced thirty square leagues, or 172,800 acres; and the latter, 653, 379 acres. In addition, there were claims under François Castro for 23, 468 acres; and, in the county of Rapides, there were three large claims derived from purchases made of the Indiand by permission of the Spanish governors. The claim of Joseph Gillaird to lands purchased of the Pascaguola Indians was said to amount to 16,000 acres. Miller and Fulton, Indian traders, laid claim to two large tracts of land. The first, purchased of the Choctaw Indians, was located on Bayou Boeuf and contained 39,538 ½ acres; and the second, purchased of the Appalache and Tensaw tribes, location not given, contained 9,487 55/100 acres. The Indians had fallen in debt to the traders and had sold their lands to them to discharge their debts and acquire a little money.[19]

An examination of the three reports of the boards of commissioners shows that the task of confirming French and Spanish land titles in the State of Louisiana was practically solved, but that much trouble might be expected from the disappointed claimants in the former District of Louis-

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[19] American State Papers, Public Lands, II,616-617.

ana, now the Territory of Missouri. The greater part of the claims had been filed and considered by the boards, but there still remained some which had never been filed. These were by the acts of Congress declared to be void; but there was no desire on the part of that body to exclude legitimate claims from consideration, and in 1812 a series of acts granted further time for filing and authorized the recorder and registers of the several land offices to act in the capacity of commissioners for their respective districts.

It was confidently expected that the additional reports of the recorder and registers would make possible the final adjustment of the French and Spanish claims. Experience had shown, however, that some of the requirements in the confirmation laws were open to the criticism of being unjust. It was also felt that since the investigations of the boards had singled out some of the claims of a questionable character Congress might now adopt a more liberal policy;[20] and legislation for that purpose was taken up at the opening of the next session, which met in December, 1813.

As soon as the House was ready for business, Edward

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[20] American State Papers, Public Lands, III, 150-151.

Hempstead, Delegate from the Territory of Missouri and personally interested in some of the claims rejected by the board of commissioners, secured the adoption of resolutions giving certain instructions to the Committee on the Public Lands. The committee was instructed to inquire into the expediency, (1) of providing by law for the confirmation of all grants of land or orders of survey lawfully made and completed in the Territory of Missouri "during the time the said Territory was in the actual possession of Spain or France, and while either of those Powers exercised the sovereignth therein," (2) of making provision for the granting of all claims to tracts of not more than 640 acres where the claimant, or the person under whom he claimed, had actucally cultivated the land prior to December 20, 1803,[21] (3) of enabling those whose claims "shall not be confirmed or granted, under the laws of the United States, to contest the legality of such decisions in a court of law," and (4) of extending the right of pre-emption to actual settlers on the public lands in the said territory.[22]

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[21] The date printed in the Annals of Congress is 1813, which is evidently a typographical error.

[22] Annals of Congress, 13th cong., 1st sess., I, 787-788.

As a result of the inquiries directed by the above resolutions, Samuel McKee, of Kentucky, chairman of the Committee on the Public Lands, reported a bill "for the final adjustment of land titles in the State of Louisiana, and Territory of Missouri." The only speech on this bill given in the Annals of Congress is that of Hempstead, who endeavored to show that under the laws enacted concerning confirmations it had been impossible to carry out the guarantees of the Treaty of 1803. He said,

By the first article of that treaty, it is declared that France "has an incontestable right to the deomain." And, in the second article, among other public property, the "vanant lands," not the lands of individuals, are ceded. The third article guaranties to the inhabitants "the free enjoyment of their liberty, property, and the religion which they profess." Here it is seen, that the national faith is pledged to the performance of certain conditions. The words are positive, the promise unequivocal. . . This treaty was ratified on the 21st day of October, 1803, and the United States took possession of New Orleans on the 20th of December, in the same year, and of Upper Louisiana the 10th day of March, 1804. The Spanish officers continued to discharge their official duties until the times last mentioned. Then, sir, the operation of Spanish laws on the grants before made, was arrested by the transfer of the country, and the taking possession of it by the United States. Then the people were congratulated in proclamations on being united to a free people, and in being secure in their property. Then the change was predicted as advantageous; and then what the Spanish Government had promised, the United States were to perform.

Hempstead also reviewed the various acts passed and pointed out how their provisions conflicted with the terms of the

treaty. He characterized them as rigid, requiring impossibilities, and that they were enforced by still more rigid instructions. To prove this point he quoted from the instructions which Secretary Gallatin had sent to the boards of commissioners in 1806, but carefully avoided any mention of the conditions which gave rise to those rigid laws and instructions.[23]

After some amendment in both the House and the Senate, the bill passed and was approved on April 12, 1814. It provided that every person or persons claiming lands by virtue of any incomplete Franch or Spanish grant or concession, or any warrant or order of survey, which was issued prior to December 20, 1803, for lands lying within the State of Louisiana, or prior to March 10, 1804 for lands lying within the Territory of Missouri, should be confirmed in their claims on the following conditions: (1) the claimant must have been a resident of the province of Louisiana at the respectives times aforesaid, or at the time the said concession, warrant, or order of survey was granted; (2) the claim must have been filed with the proper register or recorder of land titles ac-

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[23] Annals of Congress, 13th cong., 1st and 2d sess., II, 1832-1835.

cording to law, and embraced in the report of the commissioners, or register, or recorder for the district within which the lands claimed were located; and (3) it must have appeared by the said report that the claim had a special location, or was actually located and surveyed before the above specified date. It was specifically stated that the following descriptions of claims should not be confirmed: (1) those which had been adjudged antedated or otherwise fraudulent, (2) those for a greater quantity of land than the number of acres contained in one league square, and (3) those of persons who had received donation grants in the said state or territory. It was also provided that no confirmation under the present act should in any way affect the rights of any persons whose claim had previously been confirmed by a board of commissioners, nor preclude a judicial decision between private claimants on interfering claims.

The second section of the act provided that in cases where claims to donations had not been confirmed merely because the tracts were not inhabited on December 20, 1803 the claims should be confirmed, subject to the provisions of former laws for the granting of donations.

In all cases where lands held by confirmed claims had not been surveyed according to law, it became the duty of

the registers and recorder to make out orders of survey; and on the return of the plot of survey, or where an order of survey was not necessary, those officials were to issue certificates which would entitle the claimant to a patent.

Finally, pre-emption rights were granted to all settlers on the public domain under the same restrictions, conditions, provisions, and regulations as prescribed by the act of February 5, 1813 granting pre-emption rights to certain settlers in the Illinois Territory.[24]

4. The Confirmation of Approved Claims.- Although in subsequent sessions there were several attempts on the part of Rufus Easton, successor of Hempstead, to induce Congress to make further changes in the laws regarding confirmations but that body, acting under the advice of the General Land Commissioner, refused to take further action until the supplementary reports authorized by the acts granting extensions of time should be received.[25] These

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[24] Laws of the United States, IV, ch.640,pp.680-682.

[25] Annals of Congress, 13th cong., 3d sess., III, 278; Meigs to Morrow, February 28, 1815 (Parker, Calendar, 4607). I have not used the latter document, but its nature is apparent from Morrow's action in having ~~the~~ a bill before the House postponed indefinitely.

reports were completed, however, during the year 1815 and were transmitted to Congress at the next session. The House Committee on the Public Lands had been instructed by a resolution to inquire what amendments, if any, were necessary to the act of April 12, 1814, "for the final adjustment of land titles in the State of Louisiana and the Territory of Missouri," and certain Assembly resolutions and petitions from the Territory of Missouri had been referred to the Committee. On March 23, 1816, Thomas B. Robertson, of Louisiana, a former member of the board of commissioners for the Eastern District of that state and now chairman of the House Committee on the Public Lands, made a report which was in part as follows:

soon after the acquirement of Louisiana by the United States, an act of Congress passed for ascertaining and adjusting the titles and claims to lands in that Territory, the principles of which were variously modified, and in some instances enlarged, by several successive acts, until that of 12th of April, 1814. In all the preceding acts the basis of confirmation or of grant was the acts of the claimant, towit, the inhabitation, cultivation, or possession, of the lands claimed. The rigor of the principle and of construction discoverable in these preceding acts, and in their execution, is supposed to have arisen from a district which was justly entertained by the Government of the genuineness or authenticity of some of the papers, purporting to be orders of survey which were presented at the public offices: but, after repeated adjudications and reviews, during ten years, it was fairly to be presumed that what was ante-dated or otherwise fraudulent, had been discriminated from the bona fide pretensions of the people. Congress, therefore,

(the rubbish being thus cleared,) assumed enlarged and liberal principles, the exercise of which, at an earlier period, might have fostered speculations, which it was their desire to repress with every harshness consistent with the rights of the honest and the undesigning. We find them in their act of 12th April, 1814, with great propriety, confirming on the acts of the late Spanish Government, without very strictly inquiring as to the particular acts of ownership exercised by the claimant. Had these general provisions been madeiin the first instance, every class of claim might have been expected to occupy its proper place in the report of the Commissioners, according to its respective grade of merit; but, as the business has been conducted, much injury has been suffered, which we doubt not Congress will be disposed to remedy as far as circumstances will now permit.

Several changes in the law were then proposed in the report,[26] and Robertson introduced a bill to carry them into effect; but it did not pass. There was, however, an act passed confirming all claims marked B and described in the various reports of the commissioners as worthy of confirmation. It was further provided that every person holding a confirmed claim who had not already obtained a patent should, whenever his claim was located and surveyed according to law, receive a certificate entitling him to a patent.[27] No provision

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[26] American State Papers, Public Lands, III, 150-151.

[27] Laws of the United States, VI, ch.159, pp.138-139. For some reason the last report of the board for the Western District of Louisiana was omitted from the list of those confirmed by the above act; and it was not confirmed until February 5, 1825. This unaccountable delay on the part of Congress caused much discontent on the part of the people concerned.

whatever was made for the further consideration of French and Spanish claims and titles within the territories embraced in the original Louisiana Purchase, and the question was regarded as definitely settled.

V. The Further Action of Congress Regarding Unconfirmed Claims.

1. The Confirmation of Claims over Which the Commissioners Had no Jurisdiction; (a) Character of the Claims.- Although the government considered that the majority of the claims in the Louisiana Purchase had been settled, it was fully aware of the fact that there were many over which the boards of commissioners had been given no jurisdiction. Indeed there were some excluded from that jurisdiction by the express action of Congress, particularly those involving more than one league square of land, such as the Maison Rouge grant in Louisiana, held by Daniel Clark, and the Bastrop grant, at one time purchased by Aaron Burr, in connection with his famous scheme; and the claims to mineral lands, namely, those containing lead mines and salt springs. Among the claims to lead mines, that of Julian Dubuque and Auguste Chouteau to the so-called "Spanish Mines" may be taken as typical of those held by natives of Louisiana; and that of Moses Austin, of those held by Anglo-Americans, whose titles were not complete. As has been seen, it was the duty of the agent for the District of Louisiana to make a special report on the claims to lead mines and salt springs. The results

of his investigations were not communicated to Congress until June 25, 1812.[1]

In addition to claims for large tracts and for mineral lands, the commissioners found that there were some which could not be taken into consideration because of their peculiar origin, of peculiar conditions to be fulfilled, or of modifications of the conditions. A typical case was that of Daniel Boone. He had moved from Kentucky to Upper Missouri, before 1798 at the invitation of the lieutenant governor, Zenon Trudeau, who had promised him a grant of land. On January 24, 1798 Boone received a concession of one thousand arpens, situated in the district of Femme Osage, and had it surveyed on January 9, 1800. On June 11, of the same year, Delassus, then lieutenant governor, appointed him commander of the Femme Osage district; and Boone, although he resided in the district for eight or nine years, did not settle and cultivate his grant, for he was assured by Delassus that his appointment exempted him from the condition of settling and cultivating the land granted to him Since this case was not embraced by the provisions of the law,

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1. For the report, see American State Papers, Public Lands, III, 572-614.

the commissioners were compelled to reject Boone's claim.[2]

(b) Confirmations by Special Acts of Congress; the Committee on Private Land Claims. The history of the confirmation of the above classes of unconfirmed claims, which were not embraced by the acts of Congress for the adjustment of French and Spanish titles in general, cannot be studied in detail at this time. But it may be stated that claims for large tracts and for those of the Boone type were settled individually by special acts of Congress. For the purpose of giving due consideration to the land claims coming before Congress, the House created, April 29, 1816, on the motion of Robertson, a new standing committee, the Committee on Private Land Claims;[3] and most of the special confirmation acts were based upon its reports. It soon became apparent that the task of the new committee was much greater than Congress had anticipated. A board of commissioners had, in effect, been established at Washington; and the adjustment of the private land claims dragged on through many years, even to the opening of the twentieth century.

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[2] American State Papers, Public Lands, II, 736.

[3] Annals of Congress, 14th cong., 1st sess., 1451, 1436.

2. Conditions Leading to a Reopening of the General Confirmation Question. It has been noted that over half of the claims passed upon by the board of commissioners in the Territory of Missouri had been rejected. The work of that board had been unsatisfactory to the administration as well as to those whose claims had been rejected. Conditions in Louisiana were better, but even there almost twenty per cent of the claims submitted to the commissioners had been rejected; and many of the people were not quite satisfied with the mere pre-emption right to the back concessions, which they considered theirs by moral right. In addition there were from time to time adjustments of the boundary dispute with Spain on both the eastern and western borders of Louisiana; and in this way new areas came under the jurisdiction of the United States. The land titles within these areas had, of course, to be adjusted.

In the meantime settlement in the west had so increased that territories rapidly passed from the second grade into the first and then into statehood. West of the Alleghanies, after 1803, Louisiana was admitted in 1812; Indiana, 1816; Mississippi, 1817; Illinois, 1818; Alabama, 1819; and Miss-

ouri, in 1821. This admission of new states in the west resulted in a corresponding increase in the representation of that region in Congress, particularly in the Senate. It was natural for the westerners to select for Congressmen those men who would favor the easy acquisition of land. This influence was particularly strong in the Territory of Missouri; and the first thing her delegates did invariably, after having taken their seats in the House, was to introduce resolutions calling for more liberal legislation regarding the confirmation of French and Spanish land titles in the Louisiana Purchase. The resolutions were, of course, supported by remonstrances and petitions from the home legislature or from the constituents; and of these documents, the western representative usually had a good supply.

3. <u>The Fight to Secure Further Legislation; (a) Scott's Resolutions and Crawford's Report.</u>- The act confirming the claims favorably reported by the commissioners was, as seen above, passed in the spring of 1816. On December 11, at the opening of the second session of the fourteenth Congress, John Scott, Delegate from the Territory of Missouri, secured the adoption of a resolution instructing the Committee on the Public Lands to inquire into the expediency of consti-

tuting the register and the receiver for the said Territory, together with some third person, a board for the final adjustment of all unsettled claims.[4] On December 30 he presented resolutions from the Missouri Legislature requesting Congress to "adopt some more enlarged and liberal principle respecting the confirmation of land titles in the said Territory; to extend the time allowed for recording land titles; to establish two additional land offices for the sale of public lands; and that the right of pre-emption in the purchase in said Territory may be extended."[5]

The above resolutions were referred to the Committee on the Public Lands; but during that session no action was taken upon the question of confirmations. Scott was persistent, and, at the opening of the fifteenth Congress secured the adoption of a resolution instructing the Committee on the Public Lands "to inquire into the expediency of making further provision by law for the final adjustment of land claims in the Missouri Territory."[6] Robertson, the

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[4] Annals of Congress, 14th cong., 2d sess., 256.

[5] Ibid., 373.

[6] Ibid., 15th cong., 1st sess., I, 445.

chairman of that committee, secured from the Treasury the reports of the commissioners and reported a bill, which was tabled near the end of the session because its was objected ~~was~~ that lack of time forbad the deliberation necessary to act with safety on the many details therein.[7] Robertson then prepared to make a more determined effort to secure the passage of a bill at the next session. By his motions the President was requested to obtain from the Spanish authorities all records and official documents relating to Louisiana, particularly those concerning land grants and titles, and the memorial and peitions were referred to the Secretary of the Treasury, who was requested to report to Congress at the next session a plan for the final adjustment and settlement of those claims. William H. Crawford was now Secretary of the Treasury, and he duly submitted the following report and plan to the Fifteenth Congress at the beginning of the second session:

In presenting a plan of final adjustment, in which no other description of claims are comprehended than those which are founded upon patents and concessions issued by the several Governments which have, at different times, exercised sovereign jurisdiction over the late province of Louisiana as held by France, the under-signed, Secretary of the Treasurary, has proceeded upon the conviction that

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[7] Annals of Congress, 14th cong., 2d sess., II, 1722.

ample provision has already been made for the adjustment of all claims to lands contemplated by the resolution, founded upon evidence inferior to patents and concessions. He has arrived at this conviction by a careful examination of the several acts of Congress for ascertaining and adjusting land titles in Louisiana, which have been passed since the 20th day of December, 1803--the period at which possession was taken of that province by the United States. This long series of acts, commencing with the 26th day of March, 1804, and terminating with the 29th day of April, 1816, presents an uninterrupted and uniform course of relaxation in favor of land claimants of every description. This relaxation has generally been effected by comprehending descriptions of cases not recognized by previous acts; by extending the time within which notices of claims and production of evidence were required, and by giving authority, not only to decide upon such claims, but to revise and confirm such as had been previously rejected. When it is considered that, in all these respects, relaxations have been frequent, and that the evidence upon which the claims have, in the first instance, and in each successive revision, been decided, has in most cases, been that alone which has been produced by the party in interest, it is extremely improbable that injustice has been done by the rejection of claims which ought to have been confirmed.

It is conceived to be extremely improbable that there should be, at this time, any considerable number of claims entitled to the liberality of the Government, which have not yet been submitted to either of the different tribunals that have, from time to time, been constituted for that purpose. The omission to submit claims to these tribunals for a long series of years, during which frequent opportunities were given to file them, accompanied, invariably, with legislative declarations, that a failure to produce them would bar all claims so far as they depended upon any act of Congress, ought, in justice and equity, to subject them to the penalty denounced in those declarations. If additional reasons should be considered necessary in support of the foregoing conclusions, they may be found in the consideration that, according to the inevitable course of events, claims which have been long discredited by rejection on the ground of fraud, or of not being provided for by law, invariably pass from the original claimants into the hands of those who have more confidence in their address and influence in conducting them to a successful result.

Considering then, that the titles to lands in the State of Louisiana, west of the eastern boundary of the island of New Orleans, and in the Missouri Territory, so far as they are derived from, or dependant upon, any act of Congress, are correctly and finally settled, nothing more is necessary than to prescribe a rule by which the validity of titles, not dependant upon the acts of Congress, may be promptly and legally determined. The draft of the bill which accompanies this report is intended to effect that object.

The first section of the draft of the bill prepared by Secretary Crawford was as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any persons dorigansons deriving titles to any lands, tenements, or hereditaments, within the state of Louisiana, under any patent of concession, legally issued by the authority of the French, British, or Spanish Governments, whilst Louisiana, or any part thereof, was in possession of those Governments, respectively, to present a petition to the judge of the district court of the State of Louisiana, setting forth fully, plainly, and substantially, the nature of his, her, or their title to the lands, tenements, or hereditaments therein described, and particularly stating the date of such patent or concession, its boundaries, the quantity of land conatined therein, and by whom issued, and also whether the same has been submitted to the examination of either of the tribunals which have been constituted by law for the adjustment of land titles in the State of Louisiana, and praying that the validity of such title may be inquired into and decided by the said court. And the said court is hereby authorized and required to hold and exercise jurisdiction of every petition in conformity with the provisions of this act, and to hear and determine the same according to the evidence which shall be adduced by the petitioner, and on the part of the United States, and in conformity with the principles of justice and the laws ans usuages of the Government by which the patent or concession was issued."

The petitioner was also to be enabled to make his election between a trial by jury and decree by the court, according to the principles and practice of the civil law. In either case, the decision was to be final and conclusive, except in

cases where the amount of land involved exceeded a certain number of acres, when an appeal might be taken by the petitioner, or the United States, to the Supreme Court of the United States, whose decision should be final and conclusive. Ample provision was made for the procuring and presenting of evidence by each of the parties to the case. All claims which were not brought before the court by petition before a specified date or which were not prosecuted to a final decision within a specified time should be forever barred in law and equity; and no other action at common law, or proceeding in equity, should ever thereafter be sustained in any court whatsoever.

The provisions of the bill were to extend to the Missouri Territory, and to that part of the Louisiana Purchase east of the State of Louisiana; and the President of the United States was to be authorized to sell all lands, the claims to which had been rejected and not subsequently confirmed, except those in the eastern district of Louisiana where confirmations were pending on the basis of the commissioners' report of November 20, 1815 and except those lands provided for in the present bill. This last provision was, of course, designed to furnish additional incentive to claimants to

bring their cases before the courts at an early day and to effectually remove the cause of trouble.[8]

In the face of the Secretary's report and the positiveness of his policy as outlined in the draft of the bill all enthusiasm for legislation regarding the confirmation of rejected land claims seemed to die out for little advantage would be gained by taking claims previously rejected as fraudulent before a tribunal with a statement that they had been rejected. Such a proceduresewould at once throw the burden of proof of validity upon the claimant. Scott, of Missouri, however, showed a determination to continue the fight by calling for Gallatin's instructions to the commissioners in 1806 to be again laid before the House.[9] These were duly transmitted, but nothing further was done during the second session of the fifteenth Congress. It was time, however, for Scott and Robertson to retire from the field and let others take the lead in the fight.

(b) Louisiana's Reply to Crawford; the Memorial.- The first session of the sixteenth Congress was begun at Wash-

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[8] American State Papers, Public Lands, III, 348-9.

[9] Annals of Congress, 15th cong., 2d sess., I, 415-416.

ington on December 6, 1819; but no resolutions or bills relative to the confirmation of French and Spanish land titles were introduced in either house till January. On the twentieth of that month both Senator Johnson, of Louisiana, and Representative Campbell, of Ohio, chairman of the House Committee on Private Land Claims, introduced bills "supplementary to the several acts for the adjustment of land claims in the State of Louisiana and Territory of Missouri."[10] The text of these bills are not at hand, but there are indications that they were identical and that their purpose was to provide for the appointment of new boards of commissioners. On February 10 the General Land Commissioner wrote a letter to the Secretary of the Treasury disapproving of forming new boards of commissioners on land claims in Louisiana or Missouri;[11] and on February 20, Johnson, to support his bill presented a memorial from the General Assembly of the State of Louisiana, which may be regarded as a reply to Crawford's report of the previous year. This memorial was also presented in the House, on the same day as in the

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[10] Annals of Congress, 16th cong., 1st sess., I, 159, 924

[11] Parker, Calendar, 4795.

Senate, by Butler, of Louisiana. It will now be considered in detail.[12]

It was evident that the Louisianans had decided to adopt new tactics and to submit a plan of their own. The opening sentences of the memorial revealed a novel interpretation of the treaty of 1803 and of the attitude of the United States on the confirmation question; They were as follows:

> To the honorable the Senate and House of Representatives of the United States in Congress assembled:
>
> Respectfully represent the General Assembly of the State of Louisiana, that Commissioners were appointed by the Government of the United States, under the treaty between those States and the French Republic, dated on the 30th of April, 1803, to adjust the land titles of the late Territory of Orleans, with a view of extinguishing thereon the claim of the said States. That it has been represented to the General Assembly that the said Commissioners have made their final reports on that subject, leaving unconfirmed a considerable mass of private titles, which, agreeably to the customs and usages of the ancient land system of Louisiana, and the equity inherent in these concessions, were fairly entitled to confirmation by the Government of the United States.[13]

There was no clause in the Treaty referred to that required a board of commissioners to adjust land titles. Neither

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[12] For the full text of the memorial, see American State Papers, Public Lands, III, 379-381.

[13] The italics in the body of the quotation are mine.

did the United States by that Treaty lay any claim to private property in the Louisiana Purchase; for it stipulated that "The adjacent islands belonged to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property" should belong to the United States government.[14] Hence the United States government had no claims to be extinguished.

After commenting at some length on "consequences imminently injurious to the great landed interests of this State," it was asked that a new Board of Commissioners be instituted. Among other things, it was also asked that all those whose claims had been rejected by the former Board of Commissioners be allowed to withdraw from the files and records of the said board and file anew with the board to be instituted all the title papers, testimony and evidence of their claims, in the same manner as if they were being submitted for the first time. The naiveness of this request need not be commented upon.

It will be recalled that in the memorial from the legislature of Orleans Territory, presented December 31,

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[14] American State Papers, Foreign Relations, II, 507.

1805, the matter of "double of back cessions" to those holding grants on river fronts had been taken up. By the supplementary act of April 21, 1806, the commissioners had been directed to report on these claims; and an act was passed February 15, 1811, giving only pre-emtion rights, to those who held concessions on river fronts. This matter was not reopened after a lapse of nine years; and the arguments presented in the memorial were as follows:

The General Assembly further represent that, under the Spanish Government of this country, the proprietors of land fronting on the Mississippi and the waters flowing from it, were bound to make and keep up the levees in front: this was made a condition in all grants of such lands; and to this day the said proprietors are bound, at their own expense, to keep up the same, for which the lands are liable to be exposed to sale in case of failure. In consideration of this servitude, the front proprietor had the privilege, under the custom, of taking possession of as much land in rear of and adjoining his front ground as he thought proper to ask. Several concessions of such lands have at times been made to the same person in tracts of forty arpens in depth; and so strong was the conviction of the Government that the back grants were necessary to the support of the front concession, burdened as the proprietor was with the foregoing service, that they were considered as his property, and could not be granted to another without his consent.

That such were the laws and usages of the Government, is shown by its records containing decrees on the subject, which, in every instance, on the application of the front proprietor, declared null and void all grants made to a third person without the consent of the first grantee.

None of the laws, usages, or customs, of the Spanish Government have been better established than the foregoing; and it has heretofore appeared to be the intention of

Congress to confirm to all claimants the lands which they held under the Government, agreeably to the laws, usages, and customs, although no formal grant has been made.

But from some misconstruction of the laws of Congress, no second concessions have been confirmed, unless it had been inhabited and cultivated prior to the 20th December, 1803, although most of the lands being low swamp, are not susceptible of cultivation, but are only useful for timber.

From the aforesaid considerations, Congress will no doubt find it expedient to declare that the backs of the forty acres tracts on the Mississippi and waters flowing therefrom shall be confirmed to the front proprietor, and to order such an extension of the lines as will, in each case, give a depth of eighty acres, agreeably to the ancient usages, avoiding to approach nearer to any river or water course on which lands have been granted than will include one-half the extent or distance between such water courses.

Realizing that they had recommended what would appear to Congress to be a very loose policy towards land claims, the Louisianans closed their memorial with a special plea based on the laws, usages and customs of the old regime.

The standard recommended to the National Legislature for deciding on the land titles of this country, will not, the General Assembly are persuaded, appear too loose and informal when the spirit and practice of the ancient land system are accurately known. To those accustomed to more rigid and precise rules in the judicial discussion of municipal rights under a different system, they may probably appear too hazardous from their liberal tenor, but conventional obligations are susceptable of a less rigid construction; they are estimated more by moral standards than by

specific legal interpretation; but adapt themselves equally totthe spirit of the contract and the nature of the subject upon which they act, avoiding, on either side, any facetious advantafe, derived simply from mere legal informality.

The land system of this country was unquestionably of the most liberal and beneficial character; it was generally bottomed on the design common to the colonial policy of all European nations in relation to American of increasing the population, the power, and defensive means of the province. In pursuance of this plan, the different administrations held out allurements to invite the emigrant, and to fix his residence in the country. The land system was the principal medium of giving to it successful opetation. MonoPolies of the soil were seldom permitted. The means of speculating in the lands, to the injury of the poorer claes, under good administrations, were really less practicable than under the present land system of the United States. Grants suitable to the condition of the applicant were extended to the most humble individual in the community. Those grants were made on simple application, and were guaranteed under the simplest forms. A right was often secured by mere occupancy, under the acquiescence of the provincial functionaries. Indeed, possession, without interfering with the claims of others, was a title under this generous policy which secured the claimant from intrusion on the inquisition of a legal tribunal. The lands were never held by the Government as a resource of public revenue, and, of course were liberally distributed to the honest settler, who was never compelled to resort to the ordinary modes of speculation and fraud to obtain a species of property which he could acquire by more simple means. The only equivalent for a concession of any necessary portion of the royal domain, was ingeneral, some evidence of an honest and sincere intention of occupying and improving it. In fine, the system yielded every encouragement to the publication of the province, by furnishing modes of conceding the domain to settlers, which were best calculated to carry its first designation into complete effect.

The General Assembly are sensibly impressed with the conviction that those considerations go to show, in a very forcible manner how few claims would have been really entitled to rejection had they been fairly tested by the liberal spirit of the ancient system. Adjudications formed by such a general standard, modified in their application to the precise equity of the case, the General Assembly are induced to believe would have given a very different result to the proceedings on this subject.

It is obvious that the Louisians did not misrepresent the usages and customs as followed during the old French and Spanish regime. On the other hand, they gave a fair description of it but studiously ignored the fact that the board of commissioners had rejected the claims chiefly on the ground of evident fraud.

(c) Amendment and Passage of the Johnson Bill; Its Provisions.- The memorial, when read on March 20th, was laid on the table; and Johnson's bill was taken up by the Senate in Committee of the Whole, on the twenty-second. There was a great deal of discussion on the details of the bill, in the course of which an amendment was passed, on the motion of Brown of Louisiana, limiting its application to Louisiana exclusively. Brown made this motion on the ground that other provisions were necessary for Missouri and Arkansas and that as a bill on the same subject was now before the House of Representatives, the

Delegates from those territories would have such provisions as were requisite and proper, inserted.[15] The bill passed the Senate the next day and was sent to the House, where after much debate it was adopted in preference to several other bills and became the Act of May 11, 1820

By the provisions of the new act,[16] claims forelands within the eastern district of Louisiana, described by the register and receiver of the said district in their report to the Commissioner of the General Land Office, November 20, 1816, and recommended for confirmation, were confirmed. Persons claiming lands within that part of Louisiana lying west of the Mississippi River, including the Island of New Orleans, were to be allowed from July 1st to December 31st to submit their claims to the register of the land district within which such lands were located, together with evidence to support those claims. The rights of all persons neglecting to file their claims within the specified time would forever after be forfeited. The registers were, on January 1st, to make a report of all the claims filed, together with the substance of the evidence in support thereof, with their opinion of the credit to which such evidence was entitled. Those who had previously filed claims which had not been confirmed,

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[15] Annals of Congress, 16th Cong., 1st sess., I,536-537.

[16] See Laws of the United States, VI, ch. 605, pp. 505 - 507.

were allowed, within the time stated above, to submit additional evidence, on which the registers were to report with their opinion of its value. Other evidence disclosed through the examination of the cases under any former law was also to be reported. From the reports of the registers, the Secretary of the Treasury was authorized to report to the two houses of Congress a list of the cases which, in his opinion, ought to be confirmed, together with the reasons upon which such opinion might be founded. In no case was a claim for a greater quantity than a square league to be recommended for confirmation. For the benefit of those having French and Spanish grants, recognized by the laws of the United States or recommended for confirmation by the boards of commissioners, to land on river fronts, the pre-emption right to "back concessions" was revived for a period of two years.

Briefly, the new act confirmed certain claims already reported upon, extended the time for the filing of new claims and the submission of additional evidence in support of claims already filed, and revived the pre-emption right to "back concessions." But the registers were not allowed the power of making decisions. They merely reported the claims with a summary of the evidence in regard to each.

From their reports the Secretary of the Treasury made his recommendations to Congress. The act applied only to Louisiana.

4 The Fight to Take the Claims into the Courts. Although further provision was made for the settlement of French and Spanish land claims in Louisiana, nothing was done concerning those in Arkansas and Missouri until the latter was admitted as a state. Her senators, Barton and Benton, took their seats at the opening of the first session of the seventhenth Congress. Scott was elected by his constituents to the lower house, where he had served as delegate. Benton, as a St.Louis Lawyer, had enjoyed a lucrative land practice, and both he and Scott were placed on the Committee on the Public Lands, in their respective houses.

(a) The Benton Bill, 1822.- On February 8, 1822, Benton reported a bill from the Senate committee to enable the holders of incomplete French and Spanish land titles in Missouri to institute proceedings to try the validity thereof, and to obtain complete titles for the same when found to be valid.[17] This bill proposed

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[17] Annals of Congress, 17th cong., 1st sess., I, 193-194.

to make the United States court in Missouri a tribunal for examining into the validity of those titles, and for confirming them, when found to be valid, to the same extent that they would have been confirmed under the French and Spanish Governments, if their sovereignty had continued over the province of Louisiana. It is noteworthy that Benton was adopting the plan which Crawford had recommended in 1818; but it is probable that the Missourians preferred to take their chances with the district court rather than to submit their claims to the Commissioner of the General Land Office.

~~(a) The Benton Bill, 1822.~~ - On March 18, 1822, Benton made a set speech in support of his bill;[18] and Gales and Seaton, editors of the Annals of Congress, for the first time began to give full reports on the debates concerning the confirmation of French and Spanish land titles. Benton, with a great array of historical knowledge, gleaned chiefly from the reports of the commissioners and Major Stoddard's Historical Sketches of Louisiana, published in 1812, explained the mode and terms of French and Spanish cessions, and showed that cessions were actually made in Louisiana in that manner and on those terms. While speaking on the last point,

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[18] Annals of Congress, 17th cong., 1st sess., I, 299-307.

Mr.B...exhibited to the Senate a great number of petitions with the original concessions attached to them. He said that the owners of these concessions had sent them so great a distance, with so much peril of being lost, for the inspection of the members of Congress, and to confront the insinuation of fraud and forgery, which they believed some agent of mischief had made against them.

Benton then proceeded to show that many of these concession were incomplete on the day of the transfer of Upper Louisiana to the United States, but valid on that day against France and Spain, and, consequently, valid to the same extent again the United States. This he did without difficulty and then advanced to his argument "that the United States had not yet provided by law for completing these titles, and that it was her duty now to do so."

In a brief review of the legislation on the subject, Benton stated that his chief objection was to that part of the act of March 28, 1804 forbidding future surveys. In speaking of the act of April 12, 1814, he said that it would nearly have settled the land claims in Missouri, if it had made a provision for the unsurveyed claims, which now formed the greater part of the claims in question. There were also many actually surveyed before March 10, 1804, but not returned to the surveyor general's office until after that day, and many others, surveyed in the spring of 1804,

before the act against surveying was known in Missouri. In showing what provision Congress had made for the claims in question, Benton merely mentioned they had been required to be registered and that every claim so registered had been reserved from public sale until a final decision had been rendered. In the meantime, these claims so far as they had been de facto surveyed or located, had been treated as property by the laws of Missouri. In conclusion, according to the Annals of Congress,

> Mr. B. expressed an earnest belief that he had made out a clear right to the relief which the bill contemplated. He believed that almost the whole of the claims embraced in it --- he would not say every one, for he would not commit himself upon a declaration beyond his knowledge --- but he believed that the body of the claims were valid, and such as would have been confirmed by the Spanish authorities without delay, and without expense. The United States, successor as well to the duties as to the rights of Spain, was bound to do the same thing. Eighteen years had elapsed since this duty had accrued; eleven since Congress pledged herself to decide them; four since the Secretary of the Treasury (Crawford), under a resolution of the House of Representatives, had reported the same bill, in principle, which is now under discussion; fifty days since the bill had laid upon our tables, and no decision yet. "Hope, deferred," said Mr.B. "maketh the heart sick;" and if the decision of these claims is deferred much longer, the hearts of these claimants must be 'sick unto death.'"

On March 25 and 26 Barton spoke on the bill.[19] In reviewing the general nature, extent, and actual situation &

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[19] Annals of Congress, 17th cong., 1st sess., I, 332, 339.

of the claims at the time when the United States took possession of Upper Louisiana, he relied principally upon Stoddard's Sketches. On this authority he stated that the amount of land involved was by no means exorbitant, and that the incomplete state of nineteen twentieths of the titles was due to Spanish usages and customs The unusually large number of concessions made in the latter years of the Spanish regime was accounted for by the explanation that the French inhabitants foresaw that Louisiana must inevitably be annexed to the United States, which change would result in the lands becoming indispensable property. It was not contemplated, either by the authorities or by the individuals, that these lands were to be actually occupied soon. When it was seen that the transfer was about to be made, those who had money or influence procured their surveys, but all could not be accommodated; nor was it material to the validity of their concessions by the laws and usages then existing. Concerning the power of the subordinate officers in granting, it seemed at least doubtful whether they had any other limit than the discretion of the confirming tribunals; and Stoddard expressed the opinion that they were discretionary, and that the laws of O'Reily and the regulations of Morales were never in force in Upper Louisiana.

Having thus reviewed the land situation in Louisiana at the time of the transfer, Barton took into consideration the laws which had been passed concerning the confirmation of French and Spanish claims. The act of April 12, 1814 was criticised on the ground that Congress had assumed an improper and unjust basis of confirmation. He said,

> The fact of actual survey or location, there assumed as the general criterion of the validity of a claim, is no criterion at all-at least no infallible one. It is a rule indiscriminate in its character, and does not distinguish between valid and invalid concessions. If a concession were good or bad, it was so for causes coeval and coexistent with the issuing of the concession or warrant itself; it was either good or bad then; and the subsequent location or survey, happening some time after, and dependent on circumstances of personal convenience or personal influence, was wholly immaterial to the intrinsic merits of the concession. This rule was also unjust in its operation, as well on the Government as the individual; unjust to the Government, because it embraced the claims that were most likely to be fraudulent, if any, for none were more likely to be so than several of the larger claims surveyed or located in good time; unjust to the citizen, because it excluded a whole class of unsurveyed warrants,..

In direct support of the bill, which, it will be recalled, was for the purpose of enabling the claimants to take their cases into the federal courts, Barton contended that the confirmation of claims was a subject for judicial decision rather than one for legislative action. His argument was, in part, as follows:

To what remedy is a citizen entitled when the same subject of property happesn to be claimed by both the powerful Government and the powerless individual, and the Government has gotten the legal title vestdd in itself? The Constitution of the United States tells him (among other things) that he shall not "be deprived of life, liberty, or property, without due process of law;" and that, in common law proceedings, he shall not lose more than about twenty dollars, without at least the right to a trial of his facts by a jury; but of what avail are mere abstract Constitutional rights, without the correspondent remedies? They lie dormant until brought into practical beneficial operation by the necessary laws. As to both the life and the liberty of a citizen, that legislation had been afforded. If the Government claims either his life or his liberty, it gives him a trial for it; but if it claim his property, and the title be in the Government, it 'holds fast to what it has got,' and tells him to petition -- 'knock, and it shall be opened.' Should he petition, his prayer is referred to some committee, to consider and report thereupon; the committee retire, and are gravely employed in poring over volumes of mere voluntary ex parte affidavits, which the humblest justice of the peace in the District of Columbia would not dare to admit in evidence before his inferior tribunal, on pain of being 'striken from the roll,' or, at least, of a reversal of his judgment by the appellate tribunal. How many perjuries are committed with impunity in such testimony, (if it deserve the name), cannot be known. How many essential facts are lost, for want of compulsory means of procuring such exparte affidavits, cannot be ascertained.

It could not have been intended by the framers of our Constitution to impose on Congress the weighty burden of deciding questions of property. Whatever, then, individual capacities may be, as a body of some two or three hundred men, divided, into two branches, they are wholly incompetent to the task. Our ancestors, therefore, wisely separated and put far apart the legislative and judicial departments of this Government, and assigned to each its respective duties and powers... As to the general right of petition, Mr. B. contended that it related more particularly to the redress of political

grievances and the reform of political abuses, and not to questions of meum et tuum, which were made subjects of judicial cognizance, and do not belong to the legislature, except so far as to provide the proper remedies.

It is not necessary to comment on the facts and arguments presented by the Missouri senators. Their methods are understood when it is remembered that they represented a section of the country strongly in favor of the easy acquisition of lands. The older states were conservative, regarding the lands as public property to be administered as a source of revenue; and Benton's bill suffered considerable mutilation at the hands of their representatives. Many of the restrictions characteristic of former acts on the subject were inserted by the process of amendments; and these gave rise to lengthy debates, merely mentioned in the Annals of Congress.[20] In its modified form the bill finally passed the Senate. The bill with its amendments was referred to a Committee of the Whole, from whence it never returned.[21]

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[20] See Annals of Congress, 17th cong., 1st sess., I, 358-371.

[21] See ibid., II, 1516, 1627.

(b) The Johnson Bill, 1823; Hostility in the House.- The matter of making provision for judicial decisions on claims to lands in the State of Louisiana was immediately taken up by Senator Johnson at the opening of the second session of the seventeenth Congress.[22] Johnson made his first speech on the general question of settling the land claims in Louisiana when he introduced a resolution relative to surveys and patents on January 30, 1823. He said,[23]

> He was sorry to say that, although the United States have had possession of Louisiana about seventeen years, neither the public lands nor private claims were yet surveyed, nor were all the claims even adjusted. There are many large claims in the country, conflicting with small ones, which had been suspended, and are not yet decided on. These are subjects of deep interest to the people of Louisiana, and they have a right to complain of the delays alluded to. Indeed, the policy which had been pursued in relation to this subject was pregnant with serious evils. The people were not only kept in suspense and uncertainty, in regard to their claims, but the influx of American population had been checked; agriculture had been discouraged, and the development of the resources of the State retarded...

The above statements seemed credible to the Senate, and the sentiment of that body was in favor of passing his bill to allow the claims to be settled in the courts. But there was some debate as to whether the three large claims

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[22] Annals of Congress, 17th cong., 2d sess,, 27.

[23] Ibid., 177-179.

to the Bastrop, Maison Rouge, and Houmas grants should be exoluded from the operation of the bill. Van Dyke, of Delaware, chairman of the Committee on the Public Lands, insisted that the bill should comprehend all claims, both large and small. After some debate it was decided to exclude the large claims from the operation of the general bill; "though the Senate seems to have acted on the ground that it was expedient to provide for their adjustment by a separate bill." The bill then passed by a vote of twenty-eight to six.[24]

Although Johnson's bill had been carefully considered by the Senate and had passed that body by a large majority, the House Committee on the Public Lands failed to report it before the adjournment of Congress.[25] This failure on the part of the Committee is not, of itself, signigicant; but the House had shown a distinctly hostile attitude toward other bills of a similar nature. Benton had secured the passage of a bill authorizing the recorder of land titles in Missouri to examine into the number and state of the unconfirmed French and Spanish land claims and to report

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[24] Annals of Congress, 17th cong., 2d sess., 181-182, 274-275.

[25] Ibid., 1122-1123.

to Congress at the next session, but it was killed in the House by the opposition of Rankin, of Massachusetts, chairman of the Committee on the Public Lands; Cook of Illinois, a member of that committee; and Taylor, of New York. Scott "strenously supported it."[26] At the time Johnson introduced his bill in the Senate, Scott introduced a similar one in the House; "which bill was committee to the committee to which is committed the bill concerning pre-emption rights in the Territory of Arkansas,"[27] from which "committee" it was never reported.

(c) The Revolt Against Committee Rule; Passage of the Scott Bill, 1824.- At the beginning of the first session of the eighteenth Congress it was evident that there was general dissatisfaction in Congress over the situation with regard to the settlement of foreign land titles in the Louisiana Purchase. The Western representatives were determined that real conditions should at least become known and that some attention should be given to the needs of their constituents. Therefore, numerous resolutions were introduced

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[26] Annals of Congress, 17th cong., 2d sess., 1144-1145.

[27] Ibid., 667, cong.,

directing the committees to make specific inquiries. These will now be reviewed.

In the House, on motion of Brent, of Louisiana, the Committee on the Public Lands was instructed, December 9, 1823 to inquire into the expediency of (1) further extending the time for filing pre-emption claims on back concessions and of extending the provisions of the act to embrace every claim confirmed by the United States, whether situated upon ~~the~~ a water course or not, (2) of causing patents to issue, in the mode pointed out by law, to persons whose claims had been confirmed by the commissioners, (3) of offering the public lands for sale, as speedily as possible, in the district south and north of Red River, in Louisiana, (4) of establishing a separate Surveyor General's district in the State of Louisiana, and (5) of reducing the price of all public lands, situated in the Prairies of Louisiana, at a certain distance, to be fixed, from wood and timber, so as to enable the United States to dispose of the same.[28] Brent also secured the adoption of another resolution directing the Secretary of the Territory to transmit the books,

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[28] Annals of Congress, 18th cong., 1st sess., I, 809.

papers, and reports forwarded by the boards of commissioners and registers for that part of Louisiana which constituted the late Territory of Orleans and to report whether the report of the late register at Opelousas, in Louisiana, had been received, upon claims submitted to his consideration by the act of May 11, 1820, and if not the cause and reasons for the delay of the said register in making the said report.[29]

In the Senate, December 11, 1823, Barton submitted a resolution that the Committee on Public Lands inquire into the expediency of making further provision by law for the final decisions of incomplete land titles in Missouri and Arkansas,[30] which was adopted the following day. On December 15, Johnson, of Louisiana, submitted a similar resolution with respect to land titles in that part of Louisiana east of the Mississippi River and the Island of New Orleans, which was adopted the next day. Johnson also secured the passage of a resolution directing the Commissioner of the General Land Office to lay before the Senate all communications received by him from the Register and the Receiver

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[29] Annals of Congress, 18th cong., 1st sess., I, 808, 812-1813.

[30] Ibid., 30, 36.

at St.Helena Court House, in Louisiana, touching their official duties, and that he communicate all the information in his possession as to the causes which had delayed the adjustment of the land claims in that district.[31] On December 17th, Benton presented a memorial from the Missouri Legislature praying the organization a tribunal for the adjudication of unconfirmed claims to lands, and that a duty be imposed upon imported lead.[32]

The dissatisfaction evinced by the submission of the above resolutions and memorial was made still more apparent by the inauguration of a movement in the House to take the matter of confirmation out of the hands of the old standing committees and turn it over to some person or persons who would make a speedy and final disposition of it. On December 19, Owen moved that a committee be appointed to be styled "The Committee on French, British, and Spanish Land Claims."[33] Campbell innocently objected to the resolution on the grounds

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[31] Annals of Congress, 18th cong., 1st sess., I, 42, 46.

[32] Ibid., 47.

[33] Ibid., 847-848.

that it proposed to take away the chief duties already assigned to the Committees on Public Lands and Private Land Claims. Scott, of Missouri, amended the resolution so as to except Missouri and Arkansas from the operation of the resolution, because he did not want the French and Spanish claims of that state and that territory in any way mixed with the British claims. After the observation by Taylor of New York to the effect that more time was needed for the consideration of creating a new standing committee, the resolution was laid on the table.

Specific proof of the bad conditions existing in eastern Louisiana was communicated to Congress in the report from the General Land Office on the "Causes of the Delay in adjusting the Land Claims in the District of St.Helena, in Louisiana." It was shown that through faulty legislation unreasonable duties had been imposed upon the register and receiver of the district and that directions for locating surveys had been found contradictory. Consequently the officials had resigned and left the land office in a most confused condition. No one could be found willing to undertake the work, until Congress should take some action to remove the difficulties.[34] The above ~~This~~ report served to heighten the dis-

[34] American State Papers, Public Lands, III, 550-554.

gust of certain members of the House with the ill success of the Committees on Public Lands and Private Land Claims in dealing with the subject of confirmations. The instances of faulty and contradictory legislation clearly set forth in the above report and the consequent suffering of the inhabitants, not to mention damaging delays with regard to other districts, were grounds for strong condemnation. Therefore, on the following day, December 23, Cook, of Illinois, introduced a resolution similar to the one submitted by Owen only a few days before; namely, that a committee be appointed to inquire into the expediency of reporting a bill to provide for the appointment of a board of commissioners to examine and adjust all claims to land by individuals against the United States, where such claims depend on titles either from any law of the United States, or act of any foreign governments, and which have been granted to the United States by virtue of any treaty or compact with such foreign governments. Cook stated that his object was to relieve Congress of a vast amount of work which it was unfitted to do so that justice might be more speedily and rightfully done to citizens holding claims, and that other affairs of national importance might not be further neglected. The introduction of the resolution led to a rambling discussion. It was strongly opposed by Rankin

who offered a substitute resolution to have the matter referred to the Committee on Public Lands. Scott again objected to having the fate of claims in Missouri and Arkansas lashed to the British claims east of the Mississippi, and on his motion, the resolution was tabled.[35]

On January 12, 1824, the Committee on Public Lands sent in to the House its report called for by Brent's resolutions of December 9, 1823. The Committee reviewed the question of back consessions and the legislation already enacted concerning them. It was considered that ample time had been and was being given for entering pre-emption claims and that there was no good reason for further extending it. The practice of making back concessions was in violation of the policy of the Spanish government and was allowed in country of a particular nature. Therefore, there could be discovered no propriety in extending the privilege of pre-emption to a class of claims not embraced by former acts of Congress, which were founded on, and in accordance with, the Spanish usage. Adequate legislation had already been made for the issuance of patents to those holding confirmed claims, and the committee

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[35] Annals of Congress, 18th cong., 1st sess., 873-875, 882-886.

was reluctant to add "commands" to what had already been described as "duties." The matter of offering public lands for sale had been left by law at the discretion of the President, who was not bound by general rules to act without regard to occurrences and emergencies; and it was deemed unwise to change this mode of the disposal of the public lands. The Committee likewise recommended that the matter of reducing the price of prairie lands should not be taken up until it was thought necessary to classify and graduate the price of all public lands.[36] The report of the Committee, whatever may be said in favor, was not conciliatory to the Western representatives. The demands for more liberal legislation were rejected; and the Westerners at once took steps to take the matter of confirmations out of the hands of the Committee on the Public Lands.

On the day after the reading of the committee report on Brent's resolutions, the House, on motion of Scott, directed the Secretary of the Treasury to transmit the records of the boards of commissioners and the various instructions which had been sent to those officials.[37] On

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[36] American State Papers, Public Lands, III, 557-558.

[37] Annals of Congress, 18th cong., 1st sess., I, 987, 1001.

January 16, both Scott and Barton introduced bills, designed for essentially the same object, in their respective houses. Unfortunately, no account of the debates on either of the bills was reported, although there are indications that there was considerable discussion. Scott's bill finally became a law, after having been so amdnded in the Senate as to limit its operation in the Territory of Arkansas to claims not exceeding one league square. This law, the Act of May 26, 1824 "enabling claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," may be briefly analyzed as follows:

All persons, or their legal representatives, claiming lands, tenements, or hereditaments, in the State of Missouri and in the Territory of Arkansas, derived from any French or Spanish grant, concession, warrant, or order of survey, legally made, granted, or issued, before March 10, 1804, by the proper authorities, to any person or persons resident in the province of Louisiana at that date, which might have been perfected into a complete title, under and in conformity to the laws, usages and customs of the government, under which said claim originated, had not the sovereignty of the country been transferred to the United States, were given the right to institute proceedings in the federal district courts of Missouri and Arkansas to try the validity of their claims.

The United States district attorney was to represent the United States in all cases where the public domain was involved.

The court was given full power and authority to hear and determine all questions relative to title, extent, locality, and boundaries; and by final decree to settle and determine the question of the validity of the title, according to the law of nations, the stipulations of any treaty, and proceedings under the same, the several acts of Congress in relation thereto, and the laws and ordinances of the government from which the claim was alleged to have arisen.

All claims had to be brought before the court by petition within two years and prosecuted to a final decision within three years, or be forever barred from consideration by the courts. Any person securing a favorable decision from the court was authorized to present a copy of the decree to the surveyor of public lands whose duty it was to survey the land at the expense of the claimant and furnish him with a duplicate plot and certificate of survey. These the claimant could present to the Commissioner of the General Land Office at Washington and secure a patent from the President of the United States.

In all cases of unfavorable decision against petitioners, one year was allowed for appeal to the Supreme Court of the United States. In every case where the decision was against the United States, and the claim exceeded one thousand acres, the district attorney was commanded to make a statement concerning the facts of the case, and the points of the law on which the same was decided, to the Attorney General of the United States, who might, if he saw reason, direct an appeal to the Supreme Court of the United States. In cases where the property awarded to the claimant had been sold or otherwise disposed of by the United States, he was allowed to enter on public lands, after it had been offered for sale, in any part of the state or territory wherein his original claim had been located.[38]

Thus the confirmation of French and Spanish land titles in Missouri and Arkansas was taken out of the hands of Congressional committees and turned over to the local district

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[38] Annals of Congress, 18th cong., 1st sess., II, 3259-3265 (The volume of Laws of the United States, in which this act is to be found, is not in the University of California Library).

courts, in all cases where the claimants desired recourse to the courts. The principle that the confirmation of foreign land titles was a matter for judicial rather than for legislative decision was at last recognized.

The problem of confirming foreign land titles in the Louisiana Purchase can not, with profit, be further studied as a local one, for the United States had, by 1820, acquired both West and East Florida. The boundary adjustments made by the Treaty of 1819 with Spain also added territory on the western border. Each of these acquisitions brought with it a problem of confirming the titles of the inhabitants; and Congress necessarily dealt with these problems as parts of the question as a whole.

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